# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~317.~~ 58

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

KATHERINE J. DAVENPORT, BY HER GUARDIAN, EURETTA E. DAVENPORT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

**FILED NOVEMBER 23, 1875.**

# SUPREME COURT OF THE UNITED STATES.

## No. 317.

THE WESTERN UNION TELEGRAPH COMPANY, APPELLANT,

vs.

KATHERINE J. DAVENPORT, BY HER GUARDIAN, EURETTA E. DAVENPORT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.


| | Original. | Print. |
|---|---|---|
| Petition | 2 | 1 |
| Interrogatories annexed to petition | 10 | 4 |
| Summons | 13 | 5 |
| Sheriff's return | 14 | 5 |
| Petition for removal | 14 | 6 |
| Bond | 18 | 7 |
| Default for answer | 22 | 9 |
| Entry—Cause removed to circuit court United States, southern district Ohio | 22 | 9 |
| Certificate of clerk of superior court, Cincinnati | 23 | 9 |
| Answer | 24 | 10 |
| Answer to interrogatories | 26 | 10 |
| Stipulation as to testimony | 29 | 12 |
| **COMPLAINANT'S TESTIMONY.** | | |
| Deposition of Euretta E. Davenport | 30 | 12 |
| H. W. Davenport | 109 | 33 |
| K. J. Davenport | 126 | 37 |
| **DEFENDANT'S TESTIMONY.** | | |
| Deposition of Samuel B. Keys | 146 | 43 |
| Robert W. Richey | 160 | 47 |
| Complainant's Exhibit A | 202 | 59 |
| Entry—Decree for plaintiff | 228 | 72 |
| Appeal-bond | 229 | 72 |
| Clerk's certificate | 232 | 74 |

1 At a stated term of the circuit court of the United States within and for the sixth judicial circuit and southern district of Ohio, begun and held at the court-house in the city of Cincinnati, on the first Tuesday of April, being the sixth day of that month, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth.

Present, the honorable Philip B. Swing, one of the judges of said court.

Among the proceedings had were the following to wit:

KATHERINE J. DAVENPORT, A MINOR, BY Euretta E. Davenport, her guardian,
*against*
THE WESTERN UNION TELEGRAPH COMPANY. } 1972. Chancery.

Be it remembered that heretofore, to wit, on the second day of November, in the year of our Lord one thousand eight hundred and seventy-four, came the said defendant, by Collins & Heron, its solicitors, and filed in the clerk's office of the court aforesaid, a transcript of the record and proceedings of the superior court of Cincinnati in said
2 cause, clothed in the words and figures following, to wit:

Pleas at the city of Cincinnati, in the county of Hamilton, and State of Ohio, in the term of October, anno Domini one thousand eight hundred and seventy-four, of the superior court of Cincinnati, held by the honorable T. A. O'Connor, one of the judges of said court, sitting in separate session, in room No. one in the court house, in the city of Cin-Cincinnati, county and State aforesaid.

KATHERINE J. DAVENPORT, A MINOR, BY Euretta E. Davenport, her guardian,
*against*
THE WESTERN UNION TELEGRAPH COMPANY. } 30992. Equitable relief.

Be it remembered that heretofore, to wit, on the 11th day of August, A. D. 1874, came the above-named plaintiff, by Cox, Follet and Cochran, her attorneys, and filed in the office of the clerk of said court her certain petition and praecipe, clothed in the words and figures following, to wit:

*Petition and praecipe.*

THE STATE OF OHIO,
*Hamilton County, ss:*

Superior court of Cincinnati.

KATHERINE J. DAVENPORT, A MINOR, BY Euretta E. Davenport, her guardian, plaintiff,
*vs.*
3 THE WESTERN UNION TELEGRAPH COMpany, defendant. } Petition.

The said plaintiff, Katherine J. Davenport, who is a minor, and brings this action by her guardian, Euretta E. Davenport, for cause of action against the defendant, The Western Union Telegraph Company,

a corporation organized under and in pursuance of the laws of the State of New York, says, that heretofore, to wit, in the month of May, 1871, she, the said plaintiff, was and still is the owner of three hundred and ninety shares of the capital stock of the defendant, The Western Union Telegraph Company, each share being of the par value of one hundred dollars; that the said plaintiff became the owner of said shares of stock as one of the children and a legatee under the will of the late Charles Davenport, deceased.

That after the settlement of the estate of said Charles Davenport, there remained for distribution in accordance with the provisions of his said last will and testament, eleven hundred and seventy shares of said capital stock of said defendant, of which the said plaintiff was enti-
4 tled to and did receive three hundred and ninety shares; that as this plaintiff is informed and believes, the numbers of the stock certificates for eleven hundred and fifty of said eleven hundred and seventy shares were as follows: Nos. 2610, 2611, 2612, 2613, 2614, 2615, and 2616, each for fifty shares. Nos. 3603, 3716, 3717, 3718, 3719, 3720, 3722, and 3723, each for one hundred shares, and there was one certificate for twenty shares, the number of which this plaintiff is unable to state.

That at the time of the settlement of said estate of Charles Davenport, deceased, the guardian of this plaintiff was and still is the said Euretta E. Davenport; that this plaintiff is unable to state what particular 390 shares of said 1,170 shares of stock were transferred to the said plaintiff as her portion of the same, but this plaintiff is informed and believes that the 390 shares of said stock so transferred to her, were surrendered to the said defendant and that a new certificate for the entire 390 shares was issued by said defendant to this plaintiff and in her name, but this plaintiff is unable to give the number of said certificate.

That since the transfer to this plaintiff of said 390 shares of stock, this plaintiff has been the actual bona fide owner of the same,
5 and has full title in law and equity to the same, and to stand as such owner on the books of said defendant and to any and all dividends that have been or may hereafter be declared upon said stock.

Yet the said defendant regardless of the rights of this plaintiff and in violation of the duties and obligations in this behalf, without any legal right or authority whatever has, as this plaintiff is informed and believes, transferred said stock upon its books out of the name of this plaintiff and placed the same in the name of some person or persons to this plaintiff unknown, and has since that time refused to recognize this plaintiff as the owner of said stock or to pay her or her said guardian the dividends declared and payable thereon.

That this plaintiff is informed and believes that said transfer of said stock upon said books of said defendant was made in pursuance of a pretended power of attorney authorizing such transfer, executed in the name of this plaintiff, but this plaintiff avers that she never executed herself, nor did she authorize any one else to execute any such power of attorney.

6 That being a minor this defendant had no legal capacity to execute such power of attorney, or to authorize its execution or the transfer of said stock, and if any such power of attorney was exhibited to the said defendant, the same was false, fraudulent and forged, and any transfer or pretended transfer of said stock out of the name of this plaintiff was false and fraudulent and in no manner directly authorized by this plaintiff.

The said plaintiff further says that after the transfer of said 390

shares of stock to her as aforesaid and the issuing of certificates therefor, the same was taken into the custody of her said guardian Euretta E. Davenport, and remained in her custody until some time about the first (1st) of June, 1871. That the certificate of said shares of stock with other valuable papers of said Euretta E. Davenport, were kept by her in a tin box which was deposited by her for safe keeping in the Fourth National Bank, of Cincinnati, Ohio.

That about the 1st of June, 1871, the said Euretta E. Davenport being about to go to Europe, and expecting to be gone for a year or more, and thinking it might be necessary during her absence for some
7 one to have access to said box, entrusted the key to said box with one Robert W. Richey, but with no authority to said Richey or any one else, to take or in any manner remove or dispose of said stock, or to do anything with the same. That since that time, neither the said plaintiff nor her said guardian has seen said certificate of stock, nor has this plaintiff or her said guardian any copy or memorandum of said stock, and hence are unable to state with certainty whether there was one or more certificates of said stock or the number or numbers of the same, or whether said certificate or certificates of stock stood in the name of this plaintiff, or of her said guardian as such guardian, but plaintiff believes, from the best information she can obtain, that there was but one certificate and that in the name of this plaintiff.

Plaintiff further says, that a dividend was declared of two per cent. upon the capital stock of said defendant, payable on the 15th day of July, 1874, amounting in the aggregate upon the said 390 shares belonging to this plaintiff to the sum of seven hundred and eighty dollars, to which this plaintiff is entitled but which the said defendant
8 refuses to pay either to the said plaintiff or to her said guardian. That this plaintiff is not advised and therefore cannot state, whether any other dividends have been declared by said defendant since the month of May, 1871, or, if so, the amount of such dividend or dividends, and when payable, but if any such dividend, or dividends have been declared, this plaintiff is entitled to the amount thereof upon said 390 shares of stock with interest from the time the same was payable, and this plaintiff is also entitled to have said three hundred and ninety shares of the capital stock of said defendant replaced in her name upon the books of said defendant, and also to a certificate for the same, and also to be restored to all that she has lost by reason of the false, fraudulent and forged transfer of said shares of stock. The plaintiff also annexes to this petition certain interrogatories which she desires said defendant to answer.

The said plaintiff therefore prays the court by proper decree to ascertain the amount due this plaintiff from the said defendant as dividends upon the said three hundred and ninety shares of stock, and that
9 the defendant may be ordered to pay the same within a short time, to be fixed by the court, and in default thereof that execution may issue therefor.

That the said defendant may also be ordered and directed to replace the said three hundred and ninety shares of stock in the name of this plaintiff, and to issue to this plaintiff a certificate for the same, within a short time to be fixed by the court, and in default thereof that the said defendant pay to this plaintiff the sum of thirty-nine thousand dollars, and that execution may be awarded therefor. That the said defendant may be required to answer the interrogatories hereto at-

tached, and that plaintiff may have such other and further relief as may be just and equitable.

COX, FOLLETT, AND COCHRAN,
*Att'ys for Pl't'ff.*

THE STATE OF OHIO,
*Hamilton County, ss:*

Euretta E. Davenport, being first duly sworn, says that she is the guardian of Katherine J. Davenport, who is a minor, and that she believes the matters stated in the foregoing petition to be true.

EURETTA E. DAVENPORT.

Subscribed in my presence and sworn to before me this 11th day of August, A. D. 1874.

[SEAL.]

A. W. WATERS.
*Notary Public Hamilton County, Ohio.*

10 Interrogatories annexed to the foregoing petition to be answered by the defendant in pursuance of section 105 of the code of civil procedure of the State of Ohio.

1st. In whose name did the certificates of stock numbered as follows: 2610, 2611, 2612, 2613, 2614, 2615, 2616, 3603, 3716, 3717, 3718, 3719, 3720, 3722, and 3723 stand upon the stock books of the Western Union Telegraph Company; have said certificates of stock, or any part of them, been transferred, and if so, to whom, or have they been surrendered and canceled and new certificates issued in lieu thereof, and if so to whom were such new certificates issued, and what are the numbers of the same, and for what number of shares of stock was each of said new certificates issued?

2nd. Did not the said plaintiff, Katherine J. Davenport, in the month of May, 1871, appear upon the books of said Western Union Telegraph Company as the owner of three hundred and ninety shares of the stock of said company, and if so, what are the number or numbers of the certificate or certificates of such shares, and do they still stand in her name upon the books of said company?

11 3d. If said plaintiff Katherine J. Davenport did not appear upon the books of said company as the owner of 390 shares of the stock of said company, in the month of May, 1871, did not Euretta E. Davenport, as guardian of said Katherine J. Davenport at the date aforesaid, appear upon the books of said company as the owner of three hundred and ninety shares of the stock of said company? And if so, give the number or numbers of the certificate or certificates of such shares, and state whether they still stand in the name of such guardian as aforesaid upon the books of said company.

4th. Has said 390 shares of stock so standing in the name of Katherine J. Davenport or of Euretta E. Davenport, as guardian of said Katherine J. Davenport, been transferred upon the books of said company, and if so when and to whom was such transfer made, and by what authority, or pretended authority, was the same done?

5th. Have new certificates been issued for said 390 shares of stock, and if so, when and to whom?

6th. Has the defendant in its custody and possession the original certificate or certificates of said 390 shares of stock as the same
12 were issued to the said plaintiff or her said guardian as aforesaid? If so, attach such certificate or certificates or copies of the same to

your answer to these interrogatories; if not, state, if you know what has become of such certificate or certificates.

7th. Who is now recognized by the defendant as the owner and entitled to said 390 shares of stock, and in whose name does the same stand upon the books of said company?

8th. State what, if any, dividends have been declared upon the stock of said Western Union Telegraph Company since the month of May, 1871; the amount of any and all such dividends, and when payable.

COX, FOLLETT AND COCHRAN,
*Att'ys for Pl'ff.*

On the back of the foregoing petition is endorsed the following, to wit, "Issue summons for def't to sheriff of Hamilton County, Ohio." (Endorsed:) Suit brought for equitable relief. Cox, Follett and Cochran, att'ys for pl'ff."

And on the same day, to wit, the 11th day of August, A. D. 1874, there issued out of the office of the clerk of said court a certain summons directed to the sheriff of Hamilton County, Ohio, clothed in the words and figures following, to wit:

13 *Summons.*

The superior court of Cincinnati.

THE STATE OF OHIO,
*Hamilton County, City of Cincinnati:*

To the sheriff of the county of Hamilton:

You are commanded to notify the Western Union Telegraph Company, a corporation, defendant, that it has been sued by Katherine J. Davenport, by her guardian, Euretta E. Davenport, plaintiff, in the superior court of Cincinnati, and that unless it answer by the 12th day of September, A. D. 1874, the petition of the said plaintiff against it filed in the clerk's office of said court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the 24th day of August, A. D. 1874.

Witness my hand and the seal of the said court at Cincinnati, this 11th day of August, A. D. 1874.

[SEAL.]

W. M. TREVOR,
*Clerk of the Superior Court of Cincinnati,*
By EMIL HOFFMANN,
*Deputy.*

On the back of the foregoing summons is endorsed the following, to wit, "Summons in action for equitable relief. To 24th day of August, 1874. Cox, Follett & Cochran, att'ys."

14 And afterwards, to wit, on the 24th day of August, A. D. 1874, came the said sheriff of Hamilton County, Ohio, and duly returned the foregoing summons with his return thereon, endorsed as follows, to wit:

*Returned.*

AUGUST 21ST, 1874.

Served the within-named The Western Union Telegraph Company,

by delivering a true copy hereof personally to F. A. Armstrong, manager of said company, no other chief officer being found.

GEO. W. ZIEGLER. *Sheriff*,
By GEO. W. GUYSE, *Deputy*.

And afterwards, to wit, on the 12th day of September, A. D. 1874, there was filed in the office of the clerk of said court a certain petition for removal to U. S. circuit court, clothed in the words and figures following, to wit:

*Petition for removal.*

THE STATE OF OHIO,
*Hamilton County, ss:*

Superior court of Cincinnati.

KATHERINE J. DAVENPORT, A MINOR, BY EURETTA E. Davenport, her guardian,
*vs.*
THE WESTERN UNION TELEGRAPH COMPANY.

To the superior court of Cincinnati:

The petition of the Western Union Telegraph Company respectfully shows that a suit has been commenced in this court by Katherine
15 J. Davenport, by Euretta E. Davenport, her guardian, as plaintiff, against your petitioner as defendant.

That said suit was commenced on or about the 11th day of August, 1874, and is now pending in this court, which is within the southern district of Ohio and the sixth circuit, and that no trial nor final hearing has been had in said cause.

That said plaintiff, Katherine J. Davenport, and her said guardian, Euretta E. Davenport, are and were at the time of the commencement of said suit citizens of the State of Ohio, and your petitioner is and was at the time of the commencement of said suit a corporation organized and existing under the laws of the State of New York, namely, under an act of the legislature of said State, entitled "An act to provide for the incorporation and regulation of telegraph company," passed April 12th, 1848, and the several acts of said legislature additional thereto and amendatory thereof, and is and was at the time of the commencement of said suit a citizen of the State of New York.

That said suit is brought to compel your petitioner to replace in the name of said plaintiff three hundred and ninety shares of the capital stock of your petitioner alleged to have been transferred on the
16 books of your petitioner without authority, or in default thereof to pay to the plaintiff the sum of thirty-nine thousand dollars, and also to ascertain the amount of certain dividends on said stock alleged to be due to the plaintiff and to amount to at least the sum of seven hundred and eighty dollars, and to compel the payment of said amount to the plaintiff by your petitioner.

That your petitioner denies and will contest the right of the plaintiff to any portion of the relief claim' in said suit, and that the matter in dispute therein exceeds the sum or value of five hundred dollars exclusive of costs.

Your petitioner desires that said suit may be removed for trial from this court into the next circuit court of the United States to be held in

the district where the said suit is pending, to wit, into the next circuit court of the United States for the southern district of Ohio, pursuant to the provisions of the statute of the United States in such case made and provided; and your petitioner is ready to give, and hereby offers to give, good and sufficient surety for entering in said circuit court on the first day of its session copies of the process against it in said
17 suit, and all pleadings, depositions, testimony, and other proceedings in the cause, and also for its there appearing and entering special bail in the cause if special bail was originally requisite therein.

Your petitioner therefore prays that said suit may be removed from this court into said circuit court of the United States for the southern district of Ohio; that this court do accept the surety aforesaid and herewith filed, and proceed no further in this suit, and that your petitioner may have such other relief and order as may be just.

{ WESTERN UNION TELEGRAPH COMPANY. SEAL. } THE WESTERN UNION TELEGRAPH COMPANY,
By WM. ORTON,
*President.*

STATE OF NEW YORK,
*City and County of New York, ss:*

William Orton, being duly sworn, says that the Western Union Telegraph Company, the petitioner in the foregoing petition, is a corporation, and that he is president thereof; that the foregoing petition is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Deponent further says that he is the same person who subscribed to the foregoing petition the name of the Western Union Telegraph
18 Company, and his own name as president of said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing petition is such corporate seal, and was so affixed by him by authority of said corporation, and that by the same authority he subscribed to the said petition the name of the said corporation and his own name as president thereof.

WILLIAM ORTON.

Subscribed and sworn to before me this 10th day of September, 1874.
Witness my hand and official seal.
[SEAL.] WILLIAM H. CLARKSON,
*Commissioner for Ohio in New York,*
117 *Broadway, New York City.*

And on the same day, to wit, the 12th day of September, A. D. 1874, there was filed in the office of the clerk of said court a certain bond, clothed in the words and figures following, to wit:

*Bond.*

Know all men by these presents that we, George T. Williams and F. A. Armstrong, are held and firmly bound unto Katherine J. Davenport, of Cincinnati, in the State of Ohio, in the sum of one thousand dollars lawful money of the United States of America, to be paid to the said Katherine J. Davenport, her executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our,
19 and each of us, the heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals,

dated the 12th day of September, one thousand eight hundred and seventy-four.

Whereas, on or about the 11th day of August, 1874, a suit was brought in the superior court of Cincinnati, in the State of Ohio, Hamilton County, by the said Katherine J. Davenport, a minor, by Euretta E. Davenport, her guardian, as plaintiff, against the Western Union Telegraph Company, a corporation organized and existing under the laws of the State of New York, as defendant, and the same is now pending in said court, which is within the southern district of Ohio, and the sixth circuit, and no trial or final hearing has been had in said cause, and the said plaintiff, Katherine J. Davenport, and her said guardian, Euretta E. Davenport, are, and at the time of the commencement of said suit citizens of the State of Ohio, and the said defendant, The Western Union Telegraph Company, is, and at the time of the commencement of said suit was, a citizen of the State of New
20 York, and the matter in dispute in said suit exceeds the sum or value of five hundred dollars exclusive of costs.

And whereas the said The Western Union Telegraph Company is aoutb to file its petition for the removal of said cause for trial into the circuit court of the United States for the southern district of Ohio, pursuant to the provisions of the United States in such case made and provided:

Now the condition of this obligation is such that if the said The Western Union Telegraph Company shall enter in the circuit court of the United States for the southern district of Ohio, next to be holden in said district on the first day of its session, copies of the process against it in said suit, and of all pleadings, depositions, testimony, and other proceedings in the cause, and also shall there appear and enter special bail in said cause if special bail was originally requisite therein, then the above obligation to be void, otherwise to remain in full force and virtue.

GEO. T. WILLIAMS. [SEAL.]
F. A. ARMSTRONG. [SEAL.]

Signed, sealed, and delivered in the presence of—
F. M. CALKINS.
DANIEL HENDERSON.

21 STATE OF OHIO,
*Hamilton County, ss:*

George T. Williams and Frank A. Armstrong being severally duly sworn, each for himself, says that he is one of the subscribers to the foregoing undertaking; that he is a resident and freeholder within this State; and is worth the sum of two thousand dollars and more, over and above all his debts and liabilities, and exclusive of property exempt from execution.

Sworn to before me this 12th day of September, 1874.
[SEAL.] DANIEL HENDERSON,
*Notary Public, Ham. Co., Ohio.*

STATE OF OHIO,
*Hamilton County, ss:*

On this 12th day of September, 1874, before me personally appeared George T. Williams and Frank A. Armstrong, to me known to be respectively the persons described in and who executed the foregoing undertaking, and severally acknowledged that they executed the same as their voluntary act and deed.

Witness my hand and official seal at Cincinnati, this 12th September, 1871.

[SEAL.] DANIEL HENDERSON,
*Notary Public, Ham. Co., Ohio.*

22 *Default for answer.*

And on the same day, to wit, the 12th day of September, A. D. 1874, the said defendant having been duly served with process herein and having failed to answer or demur to the petition herein filed against it within the time prescribed by law, default for answer was entered against it by the clerk of said court in accordance with the rules and regulation thereof.

And afterwards, to wit, on the 6th day of October, in the term of October, A. D. 1874, of said court, the following entry was made on the journal thereof, to wit:

KATHERINE J. DAVENPORT, BY HER GUARDIAN, Euretta E. Davenport,
*vs.*
THE WESTERN UNION TELEGRAPH COMPANY. } Min. 26. 30992.

On petition of the defendant for the removal of this cause to the circuit court of the United States for the southern district of Ohio, and proof being made that said defendant is a corporation organized under the laws of the State of New York, and not a citizen of the State of Ohio, and said defendant offering good and sufficient security for the filing in such court on the first day of its session, copies of the
23 process and other proceedings in this case, and for its appearance in said court, it is now ordered that this cause proceed no further in this court, and that the same be transferred to the circuit court of the United States.

THE STATE OF OHIO,
*Hamilton County, City of Cincinnati, ss:*

I, W. M. Trevor, clerk of the superior court of Cincinnati, do hereby certify that the foregoing is a full and correct transcript of the proceedings had and entered in the case of Katherine J. Davenport, by Euretta E. Davenport, her guardian, against the Western Union Telegraph Company, No. 30992, as the same appear from the files and journals of said court now in my office.

Witness my hand and the seal of said court at Cincinnati this 22d y of October, A. D. 1874.

[SUPERIOR COURT SEAL.] W. M. TREVOR,
*Clerk Superior Court of Cincinnati, Ohio,*
By EMIL HOFFMANN,
*Deputy.*

24 And afterwards, to wit, on the twelfth day of December, in the year of our Lord one thousand eight hundred and seventy-four, came the said defendant, by its attorneys, Collins & Herron, and by leave of court filed in the clerk's office of said court its answer herein, which said answer is in the words and figures following, to wit:

*Answer.*

Circuit court of the United States, southern district of Ohio.

Answer.

Said defendant, for answer to the bill of complaint of plaintiff, says that in the month of May, 1871, there were 390 shares of the capital stock of the Western Union Telegraph Co. standing in the name of Katherine J. Davenport, each of said shares being of the par value of one hundred dollars, but defendant has no knowledge whether plaintiff is the identical person who owned said shares, or that plaintiff is or then was a minor, and therefore denies the same.

Defendant has no knowledge relating to the settlement of the estate of said Charles Davenport, but admits that his executors, claiming to act under his will, caused said 390 shares of stock to be transferred to his daughter Katherine J. Davenport, on or about the 13th day of May, 1867, and on that day a new certificate for said shares, No. 15363,
25 was issued by the said company for said Katharine. Defendant denies that said plaintiff ever since that time has been and still is the owner of said 390 shares, or entitled to the dividends thereon.

Defendant admits that on or about the 20th day of June, 1871, said stock was transferred on the books of said company out of the name of said Katharine, but denies that said transfer was made without any legal right or authority, and avers that said transfer was made by proper authority.

Defendant denies that the power of attorney by virtue of which said transfer was made was false, fraudulent, or forged.

Defendant has no knowledge in relation to the manner in which the certificate for said shares was kept while the same belonged to said Katherine, and therefore denies the allegations of the bill of complaint relating thereto.

Defendant denies that plaintiff was entitled to said dividend of two per cent. made on the day of July, 1874, or that she is entitled to have said stock replaced in her name on the books of the company.

Wherefore defendant asks to be hence dismissed with its costs.

COLLINS & HERRON, *Att'ys.*

26 STATE OF NEW YORK,
*County of New York, ss :*

Norvin Green, vice-president of said Western Union Telegraph Co., being duly sworn, say he believes the statements of the foregoing answer are true.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th day of Dec'r, 1874.

[N. P. SEAL.]

R. N. ROCHESTER,
*Notary Public, N. Y. Co.*

*Answer to interrogatories.*

1. To the first interrogatory defendant answers that the certificates numbered as in said question were issued to Charles Davenport. They have been surrendered and a new certificates issued to the widow children of said Charles for 390 shares each.

2d. To the 2d interrogatory defendant answers: Katharine J. Davenport was the owner of 390 shares on the books of said company in May, 1871, and the No. of the certificate was 15363.

3d. The third interrogatory is already answered.

4th. Said 390 shares standing in name of said Katherine were
27 transferred on the books to Soutter & Co., bankers in New York, June 20th, 1871, by authority of a power of att'y signed by Katherine Josephine Davenport, and the signature duly witnessed by the brother of her guardian and mother, R. W. Richey.

5th. A new certificate for said shares was issued at time of said transfer to Soutter & Co.

6th. Defendant has the original certificate in its possession for said 390 shares, and a copy thereof is hereto attached as requested.

7th. Said stock has been transferred to other parties by Soutter & Co., and defendant has not yet been able to trace same to present owners.

8th. Only two dividends have been declared on said stock since May, 1871, namely, a dividend of two per cent. payable in July, 1874, and a dividend of two per cent. payable in Oct., 1874.

STATE OF NEW YORK,
*County of New York, ss:*

Norvin Green being duly sworn, says he is the vice-president of said Western Union Telegraph Company, and that the foregoing answers to plaintiff' interrogatories are true according to the best of his
28 knowledge, information, and belief.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th Dec'r, 1874.

[N. P. SEAL.] R. N. ROCHESTER,
*Notary Public, N. Y. Co.*

COPY OF CERTIFICATE.

Shares $100 each.

The Western Union Telegraph Company. Certificate No. 15363. Shares 390.

Katharine Josephine Davenport is entitled to three hundred and ninety (390) shares, of one hundred dollars each, in the capital stock of the Western Union Telegraph Company, transferable in person or by attorney on the books of the company only on the surrender and cancellation of this certificate by endorsement thereof hereon and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president & secretary of the said company have hereunto subscribed their names at the city of New York, this 13th day of May, 1867.

HIRAM SIBLEY,
*Vice-President.*

O. H. PALMER.
*Secretary.*

29 And afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and seventy-five, came

*Answer.*

Circuit court of the United States, southern district of Ohio.

Answer.

Said defendant, for answer to the bill of complaint of plaintiff, says that in the month of May, 1871, there were 390 shares of the capital stock of the Western Union Telegraph Co. standing in the name of Katherine J. Davenport, each of said shares being of the par value of one hundred dollars, but defendant has no knowledge whether plaintiff is the identical person who owned said shares, or that plaintiff is or then was a minor, and therefore denies the same.

Defendant has no knowledge relating to the settlement of the estate of said Charles Davenport, but admits that his executors, claiming to act under his will, caused said 390 shares of stock to be transferred to his daughter Katherine J. Davenport, on or about the 13th day of May, 1867, and on that day a new certificate for said shares, No. 15363,
25 was issued by the said company for said Katharine. Defendant denies that said plaintiff ever since that time has been and still is the owner of said 390 shares, or entitled to the dividends thereon.

Defendant admits that on or about the 20th day of June, 1871, said stock was transferred on the books of said company out of the name of said Katharine, but denies that said transfer was made without any legal right or authority, and avers that said transfer was made by proper authority.

Defendant denies that the power of attorney by virtue of which said transfer was made was false, fraudulent, or forged.

Defendant has no knowledge in relation to the manner in which the certificate for said shares was kept while the same belonged to said Katherine, and therefore denies the allegations of the bill of complaint relating thereto.

Defendant denies that plaintiff was entitled to said dividend of two per cent. made on the day of July, 1874, or that she is entitled to have said stock replaced in her name on the books of the company.

Wherefore defendant asks to be hence dismissed with its costs.

COLLINS & HERRON, *Att'ys.*

26 STATE OF NEW YORK,
*County of New York, ss:*

Norvin Green, vice-president of said Western Union Telegraph Co., being duly sworn, say he believes the statements of the foregoing answer are true.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th day of Dec'r, 1874.

[N. P. SEAL.] R. N. ROCHESTER,
*Notary Public, N. Y. Co.*

*Answer to interrogatories.*

1. To the first interrogatory defendant answers that the certificates numbered as in said question were issued to Charles Davenport. They have been surrendered and a new certificates issued to the widow children of said Charles for 390 shares each.

2d. To the 2d interrogatory defendant answers: Katharine J. Davenport was the owner of 390 shares on the books of said company in May, 1871, and the No. of the certificate was 15363.

3d. The third interrogatory is already answered.

4th. Said 390 shares standing in name of said Katherine were
27 transferred on the books to Soutter & Co., bankers in New York, June 20th, 1871, by authority of a power of att'y signed by Katherine Josephine Davenport, and the signature duly witnessed by the brother of her guardian and mother, R. W. Richey.

5th. A new certificate for said shares was issued at time of said transfer to Soutter & Co.

6th. Defendant has the original certificate in its possession for said 390 shares, and a copy thereof is hereto attached as requested.

7th. Said stock has been transferred to other parties by Soutter & Co., and defendant has not yet been able to trace same to present owners.

8th. Only two dividends have been declared on said stock since May, 1871, namely, a dividend of two per cent. payable in July, 1874, and a dividend of two per cent. payable in Oct., 1874.

STATE OF NEW YORK,
*County of New York, ss:*

Norvin Green being duly sworn, says he is the vice-president of said Western Union Telegraph Company, and that the foregoing answers to plaintiff' interrogatories are true according to the best of his
28 knowledge, information, and belief.

NORVIN GREEN.

Sworn to before me and subscribed in my presence this 7th Dec'r, 1874.

[N. P. SEAL.]

R. N. ROCHESTER,
*Notary Public, N. Y. Co.*

COPY OF CERTIFICATE.

Shares $100 each.

The Western Union Telegraph Company. Certificate No. 15363. Shares 390.

Katharine Josephine Davenport is entitled to three hundred and ninety (390) shares, of one hundred dollars each, in the capital stock of the Western Union Telegraph Company, transferable in person or by attorney on the books of the company only on the surrender and cancellation of this certificate by endorsement thereof hereon and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president & secretary of the said company have hereunto subscribed their names at the city of New York, this 13th day of May, 1867.

HIRAM SIBLEY,
*Vice-President.*

O. H. PALMER.
*Secretary.*

29 And afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and seventy-five, came

the said plaintiff and defendant, by their attorneys. and filed in the clerk's office of said court their stipulation herein, which said stipulation is in the words and figures following, to wit:

*Stipulation.*

In the United States circuit court for the southern district of Ohio. No. 1972.

It is agreed and stipulated by the parties in this case that it shall be heard on the same testimony in this court, and in the appellate court, if it be appealed, that is, filed and given in evidence in the case of Henry W. Davenport vs. The Western Union Telegraph Company, No. 1971, in this court, so far as the same is competent, and the case is submitted to the court, the intervention of a jury being waived on that evidence, and that alone, except that it is agreed in both cases that the market price of the Western Union Telegraph stock on the day of trial in the circuit court was seventy-five per cent. on the par value thereof.

Witness our hands this 5th day of June, A. D. 1875.

JOHN F. FOLLETT,
*Att'y for Pl'ff.*
COLLINS & HERRON,
*Atty's for Defendant.*

30 *Complainant's testimony.*

Deposition of sundry witnesses taken before me, J. M. Dowson, a notary public within and for the county of Hamilton, in the State of Ohio, pursuant to the annexed notice and at the time and place therein specified, to be read in evidence on behalf of the plaintiff, in an action pending in the United States circuit court, southern district of Ohio, in which Henry W. Davenport, who sues by his guardian, Euretta E. Davenport, is plaintiff, and the Western Union Telegraph Company is defendant. John F. Follett being present on behalf of plaintiff; and Isaac C. Collins, esquire, on behalf of defendant.

EURETTA E. DAVENPORT, of lawful age, being by me first duly sworn, deposes and says as follows:

1. Question by the plaintiff. State your name and residence,
31 and your relationship to said plaintiff, Henry W. Davenport.

Name is Euretta W. Davenport, residence Cincinnati; I am the mother of Henry W. Davenport.

2. State whether or not you are the widow of Charles Davenport, deceased; when said Charles Davenport died, what children he left surviving him, their names and ages.

Ans. I am the widow of Charles Davenport. He died March 14, 1865. He left two children, Henry Wade Davenport and Katharine Josephine Davenport. Henry will be twenty-one the 25th April, 1875; Catharine was eighteen the third November, 1874.

3. Question. State whether or not Charles Davenport left a will; and if so, who were the executors of said will?

Ans. He did leave a will. J. H. Wade, of Cleveland, and Frederic Westmore, of Detroit, were the executors of said will.

32 4. Question. After the settlement of the estate of said Charles Davenport, what property, if any, was distributed under the pro-

visions of said will? State as near as you can the character and amount of such property.

Ans. There were eleven hundred and seventy shares of Western Union Telegraph stock, in three certificates of three hundred and ninety shares each, one to Henry Wade of three hundred and ninety shares, and one to Catharine of three hundred and ninety shares, and the other three hundred and ninety to myself.

5. Question. Who, if any one, was appointed guardian to your children, Henry Wade and Catharine Josephine, during their minority, and state whether or not there has been any change in such guardianship.

Ans. I was appointed guardian, and there has been no change.

6. Question. State to whom the three certificates of stock of
33 which you have spoken were delivered by said executors of the will of Charles Davenport.

Ans. They were delivered to me.

7. Question. Look at the two certificates of stock now shown you, purporting to be for three hundred and ninety shares each of Western Union Telegraph Company stock, one issued to Henry Wade Davenport, and numbered 15362, the other Katharine Josephine Davenport, for three hundred and ninety shares of said Western Union Telegraph stock, and numbered 15363, and state whether or not they are two of the certificates of stock turned over to you by said executors as you have heretofore stated.

Ans. They are the two certificates. (Certified copies of said certificates are hereto attached, marked Exhibits A and B, J. M. Dowson, notary public.)

8. Question. Look at the two receipts now exhibited to you, purporting to be receipts signed by yourself as guardian for your said children respectively, and state whether or not they are the receipts given
34 by you to said executors for said certificates of stock.

(Question objected to by counsel for defendant.)

Ans. They are the same.

(Copies of said receipts are hereto attached, marked Exhibits C and D, J. M. Dowson, notary public.)

9. Question. State what was done by you with said certificates of stock 15362 and 15363, when you received the same from said executors, where they were kept, and all you know with reference to the same?

Ans. When I received the certificates they were put in a tin box and put in the safe of the Fourth National Bank, and kept there.

10. Question. State whether or not said certificates of stock were ever removed from said tin box by your authority or consent, and when you first learned that they had been taken out of said box.

(Objection to first part of question as leading by counsel for defendant.)

35 Ans. They never were taken from the box with my knowledge or consent. I first learned about the first of April, 1873, that they had been taken on the last of March.

11. Question. When did you last see such certificates of stock previous to the last of March or first of April, 1873, and where were they at that time?

Ans. I don't remember the date of the time when I saw them, but when I saw them they were in the box.

12. Question. Where was said box kept during the year 1871? and state whether or not any one had access to said box except yourself.

Ans. The box was kept in the safe of the Fourth National Bank during

the year 1871, no one having access to the box except Robert Richey, and he had access to the box to take the coupons from the bonds during my absence from the city.

13. Question. What bonds do you refer to in your answer to the last question?

36 Ans. Government bonds.

14. Question. Where were you during the year 1871, and where were your children, Henry and Katharine?

Ans. I was in Put in Bay during the summer, with Katharine. Henry was in Europe. He sailed on the 1st July, 1870. I made a mistake in the year. I sailed for Europe on the first day of July, 1871. Previous to my sailing I was on Walnut Hills to the first of June. The first two weeks of June I was in the city, in Cincinnati. I went from there to Cleveland, and from there to New York. Katharine was with me all the time. Henry was in Europe. It was in the year 1870 that I was at Put in Bay.

15. Question. Look again at the certificate' of stock numbered 15362 and 15363, copies of which are hereto attached, and marked Exhibits A and B, and state whether or not you have any knowledge of the pretended assignment of said certificates of stock, and all you know about the same.

37 Ans. I do not know anything about the assignment of said stock. I knew nothing about it.

[The latter part of March or first of April, 1873, while I was in Europe, I was written to and told that the stock was not in the box and could not be found. I wrote immediately to Robert, asking him if it were true that he had sold my children's stock. He replied, saying that he had sold it.] I came directly home and found the box empty.

(So much of the answer objected to for incompetency as included in brackets.)

16. Question. Please examine the signatures, Henry Wade Davenport to the pretended assignment on said certificate number 15362, and Katharine Josephine Davenport to the pretended assignment on said certificate number 15363, and state whether or not they are the genuine signatures of your said children, Henry and Katharine, or if you know by whom said signatures were written.

Ans. They were not written by my children, or either of them. They were not signed by either of my said children. I do not know

38 who signed them, not being an adept.

17. Question. Were the said certificates transferred, or the pretended signatures of your children placed upon said certificates of stock, or either of them, with your knowledge or consent or under your directions?

(Objected to as leading by defendant.)

Ans. They were not.

18. Question. Had anything ever been said to you by any one in relation to selling or disposing of said stock to the respective dates of said pretended transfers?

(Question objected to as leading by defendant.)

Ans. Never in the world; never such a thought entered my mind as selling my children's stock.

19. Question. State whether or not you ever received either in your individual capacity or as guardian of your said children any portion of the proceeds of the sale of said stock.

(Objected to as leading by defendant.)

39 Ans. I never did; not one cent.

20. Question. Where was the tin box of which you have spoken on your return from Europe, in 1873, as you have stated?

Ans. It was in the safe of the Fourth National Bank.

21. Question. Look at the word Katharine in the pretended signature Katharine Josephine Davenport to the transfer and certificate, number 15363, and state whether or not it is spelled in the way your daughter Katharine spells her name; and, if not, state the difference.

Ans. The name is spelled with an "e" on the transfer and she spells it with an "a." It is spelled Katherine on the transfer and she spells it Katharine.

Cross-examination by J. C. Collins, esq.:

1. Question. What bond, if any, did you give as guardian for your two children; and, if none, why not?

40 Ans. I gave none. It was not required of me. It being so expressed in the will of my husband.

2. Question. What other property of value did your husband leave besides his shares in the Western Union Telegraph Company?

Ans. That was all he left to the children, three hundred and ninety shares of stock apiece.

3. Question. Did he leave any other valuable property except the telegraph stock and the residence or homestead at Avondale?

Ans. Not to the children.

4. Question. Was he the owner of any other real estate that you know of at the time of his death beside the homestead at Avondale?

Ans. He was not.

5. Question. The account filed with the executors seems to show that there was no other personal property left by him except household

41 furniture and articles of personal are given to you, and the telegraph stock you have referred to. Have you any knowledge of any other?

Ans. Nothing more that I remember. There was a note of five thousand dollars made by R. W. Richey. There was more telegraph stock that was sold to pay debts.

5. Question. Please to state whether that note of R. W. Richey's was ever paid by him either to the executors or to yourself.

Ans. It never was paid, not even the interest.

6. Question. Look again at Exhibit C and D and state in whose handwriting is the body of those receipts and in whose hand the words "guardian," &c., following your signature.

Ans. The words "guardian," &c., after my name are in my hand.

7. Question. The estate was considered fully settled at the date of those receipts, May first, 1867, was it not?

Ans. I think it was.

42 8. Question. The homestead at Avondale was given to you personally by the will, and you sold the same afterwards to Mr. James Glenn for forty thousand dollars, I think. Is that correct?

Ans. That is. It was within less than a year after my husband's death.

9. Question. Who were your advisors in the sale of that property and its investment?

Ans. My husband advised me to sell it before his death, and I invested it to suit myself.

10. Question. How long was it after your husband's death before you received your share of one-third of the telegraph stock to which you have referred?

Ans. I suppose it was about May first, 1867. The receipt now before me shows the correct date.

(Certified copy of the same is annexed, marked "E.")

43 11. Question. Was M'r J. H. Wade, of Cleveland, advising you at any time as to the sale of the real estate or the sale of the telegraph stock?

Ans. He thought that I had better sell the real estate and keep the stock. If either had to be sold, to sell the real estate and hold on to the stock.

12. Question. Were your three hundred and ninety shares all evidenced by one certificate or made up by several certificates?

Ans. I think mine was not. I do not remember about it. I am sure my children's were. I am not so sure of my own.

13. Question. Did you buy and sell telegraph stock on speculation after you got your share from the executors?

Ans. I think I never sold any of the stock of three hundred and ninety shares. I bought stock when I sold my house. I do not remember how many shares. I do not know how long after that. I had
44 some Russian extension stock. I do not know how many shares. I sold it to M'r Keys. After that I do not remember having sold any stock except once, and then I bought the stock in again for less than I had sold it. That left me with four hundred shares, which I left.

14. Question. You afterwards sold the four hundred shares in your name? State as nearly as you can when you sold it.

Ans. It was all sold at one time. Robert told me that stock was going down, and that I had better sell it that day and then buy it in at a lower rate, and make a little on it. I objected at first, but was prevailed upon to sell it, and never heard of the money or stock afterwards. I think it was sixty-nine or seventy—1869 or 1870. I do not remember the season.

15. Question. By Robert in the above answer you mean your brother R. W. Richey, I suppose?

Ans. Yes, sir.

45 16. Question. Do you recollect at about what price those four hundred shares sold?

Ans. He told me it was thirty-three. I mean Robert told me so.

17. Question. Was it about that time when you sold yours or earlier that you first heard that J. N. Wade, of Cleveland, had sold a considerable part of his stock, if not the whole?

Ans. I never heard that J. N. Wade had sold his stock until last summer.

18. Question. Who managed your financial matters for you in 1869, 1870, and 1871?

Ans. All the managing that was done I managed myself. There was not much to manage.

19. Question. Was not your money deposited in bank to the credit of R. W. Richey?

Ans. It was not to my knowledge.

46 20. Question. Were the proceeds of the sale of your four hundred shares deposited in bank to your credit?

Ans. It was not.

21. Question. In what way, then, did you get the proceeds of the sale?

Ans. I did not get the proceeds of the sale at all. I came in and asked Robert about the stock, and he said it was all gone.

22. Question. Did you sell your Western Union stock the day that Robert advised you to do so?

Ans. It was sold that day, I think. I do not know whether it was sold that day. I signed the certificate that day.

23. Question. Where were you when you signed the certificate and who witnessed the signature?

Ans. I was in the Fourth National Bank. Nobody witnessed it
47 unless it was Robert.

24. Question. Did Robert get out the tin box or did you get that yourself?

Ans. I don't remember about it. I know the box was there, but I don't know who opened the box.

25. Question. Had you duplicate keys to the box?

Ans. No; not that I know of. I never saw but one key.

26. Question. Were any of Robert's papers or securities kept in the same box?

Ans. They were not.

27. Question. Were your government bonds which you have spoken of in that tin box the last time you saw it before you left for Europe?

Ans. The last time I saw the box I did not have it open. I do not remember when I did see the government bonds last.

48 28. Question. When did you last see the certificate of your children's stock in that box?

Ans. I think the last time I saw them was when I got my own stock. They were kept in an envelope in the box with mine. The envelope was there. I did not take the stock out. I think surely it was there.

29. Question. Was that the last time that you remember looking into the box?

Ans. I looked into the box. I think I had it out to put papers. I did not look at the contents of the box. I supposed everything was right, and I did not examine it.

30. Question. Did you keep the key of that box from the time when you sold your telegraph stock to the time you left for Europe?

Ans. I had the key part of the time & Robert had it part of the time. When it was necessary for him to attend to the coupons and I
49 was out of the city, he had it. When I went away he had the key. The day before I left the city for Europe I sent for the box to be brought to me. Robert came with it, carried it over to me, and said that it would be very foolish for me to carry so valuable a box, and to leave it in the safe of the Fourth National Bank. He carried it back.

31. Question. You supposed the government bonds were then in it?

Ans. I did. I supposed they were all there.

32. Question. When the government bonds were sold, did you get the proceeds or were they deposited in the bank to your credit?

Ans. I don't know anything about that. I never knew they were sold.

33. Question. You did not find them in the box on your return, I believe, and have never seen them since, have you?

50 Ans. No; I found the box empty on my return. There were papers in the box, but the securities were gone. I have not seen them since.

34. Question. Did not your brother Robert attend to your financial matters for more than a year before you went to Europe, and also while you were absent?

Ans. As I said before, there was very little to attend to. I never authorized him to do anything while I was gone. He was in the bank before I went away, and when I wanted money I sent there to get it.

My deposits were there. A day or two before I went away he asked me to give him the power of attorney, saying that he might have to sell bonds. I declined. He said it would be well to leave him the power of attorney, and that I refused to do.

35. Question. Were your deposits in your own name in the bank before you went away, or in the name of R. W. Richey?

51 Ans. As far as I know about they were. I always drew checks on the bank when I wanted money.

36. Question. Did your account at the Fourth National continue after you went away to Europe?

Ans. It did.

37. Question. While you were in Europe did you draw checks directly on your bank; and if so, did you send them to R. W. Richey, or did you negotiate or transfer them to third parties in Europe?

Ans. I had nothing to do about the checks. I had circular notes which I took with me. All the money I had there was in that form. When I wanted money, all I had to do was to put my name on the circular notes. They were of different amounts, varying from ten to fifty dollars.

38. Question. Did you buy any paper for all the circular notes

52 you used while you were abroad before you left, or were you to receive a new supply from time to time?

Ans. I did not. I was to receive them as I wanted them.

39. Question. And when you wanted a new supply did you write to R. W. Rickey to procure and forward them, or how did you manage about that?

Ans. I wrote to Duncan, Sherman & Co., of New York, to send them.

40. Question. And did you furnish money to Duncan, Sherman & Co. from time to time to pay for such circular notes; if not, how where they paid?

Ans. It was furnished up to the last one. The last one is unpaid for yet.

41. Question. Who did you suppose furnished the money to Duncan & Co. for these circular notes?

53 Ans. I supposed that it came from money that belonged to me. I did not suppose that my children's stock had been sold to furnish it. I did not suppose it could be.

42. Question. Did you not suppose that R. W. Rickey was furnishing means to Duncan, S. & Co. for that purpose either out of his own funds or yours?

Ans. I did not suppose that he was furnishing them out of his, for I did not know that he had anything. I always considered him very poor.

43. Question. Were you in Europe in July, 1871, to May, 1873? Were your children, Henry and Katharine, with you in Europe during all that time?

Ans. They were. Henry was at school, but I saw him every day. Katharine was with me all the time; most of the time in Vevay, in Switzerland.

44. Question. Did you keep an account with them as guardian

54 during that time, so that you are able to state what their expenses were?

Ans. I never did, either before nor after I went to Europe.

45. Question. Were they away at school before you went to Europe, or were they living with you all the time?

Ans. Henry was in Gambier one year—1867. The rest of the time,

up to 1870, he was with me. In 1870 he was in Europe at school before I went. Katharine has always been with me.

46. Question. When you kept a bank-account before you went to Europe, did you keep a blank-check book, from which you cut checks as you wanted them?

Ans. I did not; I just used loose checks. I got them out of a package.

47. Question. Did you have a pass-book with the bank, in which your deposits were credited up to you, or any means by which you
55 could know at a particular time what balance, if any, you had in bank?

Ans. I did. I had a pass-book, and when I drew a check I put down down the amount.

48. Question. How long before you left for Europe did you cease drawing checks?

Ans. Shortly before. I do not know but that I drew one in Cleveland for a small amount.

49. Question. Will you please to produce your pass-book, that we may see whether the proceeds of the bonds & stocks are not credited to you?

(The book asked for in question No. 49 was produced; a certified copy of debit and credit sides is hereby attached, marked "Exhibit K." The first item on the credit side is under date July 5th, 1871. The first item on debit side is under date May 29, 1871.)

WITNESS. I did not see the book until my return in 1873. The pass-book that I had with the bank before I left for Europe I did
56 not take with me. I did not leave it with anybody. It seems to me that Robert must have kept it.

*a* 49. Question. I see by the book he appears to have charged you, under date of July 1st, gold for expenses, $50.31; carriage to steamer, $5.00. Was he in New York when you sailed, and did he accompany you to the steamer?

Ans. He did; and remained with me until he was ordered off the steamer.

*b* 49. Question. If you had any conversation with him at that time about business, please relate what it was.

Ans. I had; just after going on the steamer he told me to be perfectly contented, that he would watch over and take care of everything for me in the bank. That was all there was for him to do.

*c* 49. Question. Examine the note of R. W. Rickey, now present and see if eight hundred and fifty dollars in two payments are not
57 endorsed as paid on account of principal, the second one being for $500, of date May 12th, 1865?

Ans. It is.

*d* 49. Question. Did you receive frequent letters from your brother Robert during the time you were in Europe, relating to business, and were you writing to him in regard to business frequently?

Ans. I think I received three or four letters during the two years. The first letter he said that everything was going on smoothly and nicely, and the next letter was to tell me that my house was vacant, and then I do not remember anything until the last letter in which he told me that he had sold my children's stock; in every letter he urged me to stay there. That is all I remember about lette's. No, I did not write him often, I do not remember how often.

*e* 49. Question. Have you kept the letters you received from

58 him, or if not all, have you kept the one referred to as the last one written by him?

Ans. I don't know whether I have that letter or not. I have a habit of burning letters, but I may have kept that one.

*f* 49. Question. Will you please examine the papers, and if you find the last-mentioned letters, furnish the same to the notary, that he may copy so much thereof as relates to business, and if you retained a copy of your letter to him, please supply the same also.

(Copy, if found, will be annexed as an exhibit marked "L.—J. M. D., Notary Public." Letter not found or furnished.—J. M. D., Notary Public.)

*g* 49. Question. You say that the signatures to the transfers of your children's stock are not in the handwriting of your children. Have you had any experience in the judging of handwriting, so as to be an expert?

Ans. They are not. I have not had any experience.

59 *h* 49. Question. Examine them again, & say if you think they have any resemblance to their handwriting?

Ans. Not the remotest.

*i* 49. Question. Would you judge from looking at them that the party making those signatures was attempting to imitate the handwriting of Henry and Katharine?

Ans. I should say not, for there is not a letter in the name made as they made them, so far as I can see.

*j* 49. Question. Does the handwriting resemble the hand of R. W. Rickey?

Ans. Very much more than it does my children's.

*k* 49. Question. Do you recognize the handwriting of R. W. Rickey as witness?

Ans. I do.

*l* 49. Question. Are you of the opinion that people always make their letters the same way when they write?

60 Ans. All persons do not. I don't for one.

*m* 49. Question. Can you produce signatures of your daughter Katharine one year ago or more, that will show that she was not in the habit of spelling her name with an "e" in the second syllable, and that her genuine signature bears no resemblance to the one in question, transferring her stock?

Ans. I think I can; I shall try.

*n* 49. Question. Is it your opinion, on inspection of the signatures of Henry and Katharine to the transfers in question, that they were both written by the same hand; and, if so, what reason can you give for so thinking?

Ans. I should say they were written by the same hand. The "D" in both are alike, and some of the other letters; but I can see that there is an attempt at an imitation in Henry Wade. I should say, from the first glance I had of them, they were written by the same person and the same hand. I think they are written by the same.

61 *o* 49. Question. Will you look at the two signatures made by yourself in receipt of July 9th, 1866, and March 4th, 1867, & say whether the letters are the same shape, and whether the two signatures resemble each other?

Ans. I never did make two D's alike. The signatures are alike. All the letters are not alike.

(Certified copies annexed, marked I & T.—J. M. D., N. P.)

*p* 49. Question. Was your brother Robert as much in your confidence

during the first half of 1871, and up to the time when you went to Europe, as he had been before?

Ans. Just about the same. He never was much in my confidence. I saw just as much of him as I ever did—just about the same always.

*q* 49. Question. Did you not allow him to keep the key of your tin box in the safe previous to the time of your leaving Cincinnati?

Ans. I did during my absence from the city. I trusted him as
62 a sister would a brother.

*r* 49. Question. Now, if about that time he had told you that it was better to sell the Western Union stock that was left, and buy it in again, and make some money by the operation, might you not have given your assent to that, and afterwards forgotten about it, trusting that he would buy it in at a lower rate, and that you would continue to hold the stock as before?

Ans. Never; such a thought never entered my head, such as selling my children's stock—never for one instant.

*s* 49. Question. You don't mean to say, I suppose, that such a thought did not enter your head when you sold the Russian extension stock, and that you had entirely forgotten about it until your order for the sale of it was showed you here to-day?

Ans. The Russian extension stock and the Western Union Tele-
63 graph stock are two entirely different stocks. The Western Union stock was good to keep and the Russian extension to sell.

50. Question. Was the bank account opened before or after the sale of the house on Avondale in your name? Was that sale made for cash, or part cash and part time?

Ans. The bank account was opened before the sale. The sale was made part cash and part time.

51. Question. State if you recollect how much was cash and whether that amount went into bank to your credit?

Ans. I think it was twenty-five thousand. It did.

52. Question. When were the government bonds you have spoken of purchased?

Ans. I think about that time. I don't recollect exactly. It was out of that money or part of it.

64 53. Question. What was the amount of the government bonds, and who attended to making that purchase?

Ans. Fourteen thousand was the amount, and Robert bought them. He was then in Kinney's Bank. They attended to it for me.

54. Question. What official position did Robert afterwards occupy in the Fourth National Bank? For about what length of time and what appointment did he then receive?

Ans. He was first teller, afterwards made cashier. From about 1867 to 1871, or about four years. I think he was there when I left the city to go to Europe in 1871, and that he was soon after appointed by the government examiner of national banks for Northern Ohio.

55. Question. Was your first bank account opened at the Fourth National or with E. Kinney & Co.?

Ans. With E. Kinney & Co. It was transferred to the Fourth National Bank when Robert took a situation there.

65 56. Question. Have you been in the habit of preserving your checks after they were returned?

Ans. I did do it for some time, and then I destroyed a great many of them.

57. Question. Have you still the checks or any of them drawn by you for the two years previous to your going to Europe?

Ans. I think not. I think when I went away I destroyed them. It made such a package to carry about. I thought they would be no longer of use.

58. Question. If I understood you, you drew no checks whatever against your bank account after you sailed for Europe?

Ans. I did not.

59. Question. Do you not remember on several occasions of your brother Robert bringing checks to you, payable to your order, and your endorsing your name on them?

66 Ans. I do not remember. If he ever did I have entirely forgotten it.

60. Question. If he had brought to you a check for the amount of the proceeds of the sale of your three hundred and ninety shares telegraph stock, payable to your order, and either given it to you or obtained the endorsement of your name on the back of it, do you think you would have remembered it to this time?

Ans. I certainly think I should have remembered it.

61. Question. And if the same thing had occurred subsequently, in reference to the sale of the four hundred shares, do you think you could have forgotten that also?

Ans. No; I do not.

62. Question. Do you recollect making any demands upon Robert after either of those two sales for the money he got for the sales?

67 Ans. I did for the four hundred shares.

63. Question. Can you state any reason why you did not make the like demand after the sale of the three hundred & ninety shares?

Ans. The four hundred shares were bought shortly after the three hundred and ninety were sold. I only know that I got the money and the shares. I supposed that the three hundred and ninety or the proceeds of the sale of the 390 were used in the purchase of the four hundred.

64. Question. Do you recollect furnishing any money in addition to the proceeds of the three hundred and ninety with which to purchase the four hundred?

Ans. I did not. The stock was bought in for less than it was sold, making me money instead of my giving money.

65. Question. How were you made aware of the fact that it was
68 bought for less than it was sold for, thus making you money?

Ans. By Robert.

66. Question. Did he show you any account of sales; if so, where did the sales appear to have been made?

Ans. I don't remember that, whether he did or not. I thought that they were made at S. B. Keys & Co. I think it pretty safe to say that S. B. Keys & Co. got it.

67. Question. About how long did you hold the four hundred shares before they were sold?

Ans. As near as I can remember it was about three years. I don't remember exactly.

68. Question. What is your recollection as to the price at which the four hundred shares were bought, and at which they were sold?

Ans. That I don't remember at all.

69 69. Question. You spoke yesterday of Robert coming to you urging the sale of that four hundred shares on that very day, and I think your recollection then was that it was sold for about 33. Is that still your impression?

Ans. It is still my impression.

70. Question. Were you under the impression that it sold for more than it cost or less?

Ans. I don't remember that, for I do not know at all what it cost, and therefore can't say whether I made or lost.

71. Question. Were there any dividends declared upon it while you had it?

Ans. I think not. I don't remember. I am under the impression that I received one dividend after my husband's death, but I think it was before I purchased the four hundred shares. I think the dividend I received was two per centum.

70 72. Question. After the sale of the four hundred shares, you are quite sure you got more of the proceeds, are you?

Ans. I am. I have thought that I never got it.

73. Question. What reply did your brother Robert make to you when you demanded of him the proceeds?

Ans. I asked him if he had bought the stock. He said it was all gone; all lost. It was to have been sold and other stock bought as before. He told me to wait until he went over and asked M'r Keys. He came back and told me that M'r Keys advised me to sell; that stock was going down. I remember that he told me it could be sold at 33, and, in a day or two, bought for much less, and I could make some money by the operation.

74. Question. How long was it after the sale that Robert told you it was all gone, all lost?

71 Ans. He told me to come in a day or two and see about it, so that I suppose it was in a day or two after that.

75. Question. And your impression is that this transpired one or two years before you went away to Europe?

Ans. My impression is that it was in 1870.

76. Question. Was Robert in the habit of rendering to you accounts from time to time of moneys received and paid out for you?

Ans. He was, but I was not as particular as I ought to have been. He being my brother, I trusted him too much.

77. Question. Did he appear to keep his account with you in any book, or did you keep any book-account with him?

Ans. It was all in the bank-book, the one book, as far as I know.

72 I did not have any book but that.

78. Question. What have become of the accounts which Robert rendered to you on paper from time to time?

Ans. The only accounts I have are in that book, the pass-book. Those are all I have, and I have not looked at those, because I did not know I had it.

79. Question. At any time after your husband's death did you keep any account of the money you were expending on account of your children or yourself, so that you can state about how your out goes were annually or monthly?

Ans. I never did keep any account between myself and my children of their expenses. I never separated theirs from mine.

80. Question. About how much did you realize from the sale of the Russian extension stock, and who got that money, yourself or Robert?

73 Ans. I do not remember how much I realized. I got the money, perhaps not all of it.

81. Question. I understood you yesterday that Robert attended to the sale of that, and that he sold it here in Cincinnati to M'r Keys. Is that your present recollection of the transaction?

Ans. That is.

82. Question. What is your recollection as to the time when that occurred?

Ans. I think it must have been in 1866. I am not sure about it.

83. Question. Have you no recollection of being in New York yourself, calling on M'r A. L. Mowry about that time and receiving from him the proceeds of that sale in a check or draft?

Ans. I never saw M'r Mowry in my life. I never was in his office. I did not know he had an office.

74 84. Question. Have you no recollection of having a check on Mowry, Keys and Beun for the proceeds of sale of the Russian extension stock, or of the amount of such proceeds?

Ans. I don't remember anything about that. It is so long ago that I have forgotten.

85. Question. Did that Russian extension stock belong to you, or did your children each own one-third of it?

Ans. It belonged to me, or I could not have sold it.

86. Could you not as guardian for your children have sold their interests, or did you not so understand it at the time?

Ans. I suppose I might have sold it as guardian. I don't remember. If it was so, I suppose it was sold that way. I know that I was advised to sell it at the time. Russian extension stock, at that time, was not very good to hold. It was not considered good, at least. I do not remember who advised me to sell.

75 87. Question. Is it your impression now that the will gave the Russian extension stock to yourself exclusively, or to yourself & children jointly?

Ans. I don't remember that. I had an idea that it belonged to me. I don't remember; it was a long time ago. I do not remember whether anything was ever said about the Russian extension stock.

88. Question. If you had thought, in 1866, of selling your children's stock as guardian for them, would you probably have asked them to sign the transfers, or would you have acted for them as guardian in that behalf?

Ans. I should not have sold anything belonging to them, to my knowledge, without taking the advice of a lawyer.

89. Question. Have you any recollection of taking the advice of any lawyer in regard to the sale of your children's interest in the Russian extension stock?

76 Ans. I don't remember anything about it. I don't even remember that they had any interest.

90. Question. If you had sold their stock as guardian, would you or not have been sure to remember it?

Ans. I think I should.

91. Question. Please to look at the paper now shown you, purporting to be an order from you (and a certified copy of which is to be hereto annexed, marked "E") on the executors of Charles Davenport for the sale of the Russian extension stock, and say whether you recognize the signatures to that as written in your hand.

Ans. This was before I got home. It is my writing—that is, the signatures are.

92. Question. Do you know of your or your children's assent to the sale of that stock being given in any other way than by that order (Exhibit F)?

Ans. I remember very little about it. I just remember that
77 it was sold, and that is all.

93. Question. I see there is a dividend on the Western Union

with which the executors charges themselves in their account, amounting to $2,950.00, of date April, 1865. Please look at the paper now shown you, of April 25th, 1865, purporting to be your receipt to the executors for the amount of that dividend, and to be a credit on the allowance for the support of yourself and children for one year, and state whether you recognize the signature as your own.

Ans. That is my signature.

(The paper referred to, or a copy thereof, marked "Exhibit G.")

94. Question. And do you also recognize your signature to the receipt for five hundred dollars on May 12th, 1865, from R. W. Rickey?

Ans. Yes, sir; I recognize the signature.

95. Question. Have you a recollection now as to the amount
78 allowed by the appraisers to you and to your children for one year's support?

Ans. As far as I recollect, nothing was allowed, nothing set apart, for that. It may have been done and I had known about it at the time, but have forgotten.

96. Question. Did you take the five-thousand-dollar note of R. W. Rickey to your own individual account, or to the account of yourself and your children jointly?

Ans. I don't remember what the arrangement was.

97. Question. Do you remember about how much money you received during the first year after your husband's death?

Ans. I do not.

98. Question. What became of the security of the five-thousand-dollar note of R. W. Rickey, being five shares of one thousand
79 dollars each, in the banking house of E. Kinney & Co.?

Ans. M'r Wetmore had those and he sent them to Robert. Robert came to me and said he wanted to withdraw from that firm and go into some other business. I don't remember now whether I gave him the order or whether I wrote myself to M'r Wetmore. When I asked him about it afterwards he told me he had invested in stocks and lost it; that is the way I understood it. I did not get the principal nor much of the interest of Robert's note. He was to have paid me five hundred dollars a year interest on the five thousand. I think he paid me five hundred in 1865 or 1866. I think the note shows. I think that was the last I received.

99. Question. You understood those shares in the bank of E. Kinney & Co. to be good for their face, that is, good security for five thousand dollars, I suppose?

Ans. I suppose it was.

80 100. Question. Look at the papers now shown you, copies of which are to be attached hereto, marked Exhibits H, I, & T, purporting to be receipts given by you to executors, of date September 26th, 1865; July 19th, 1866; and March 4th, 1867, and say whether the signatures are in your handwriting.

Ans. They are my signatures.

101. Question. State now whether since the last adjournment you have looked for the correspondence had with your brother Robert while you were in Europe; and, if so, whether you have found any of the letters.

Ans. I have looked, but could not find any of them.

102. Question. In the accounts which he rendered to you from time to time, and which you have testified to be lost or destroyed, do you remember whether there was an account showing the sale of your three

hundred and ninety shares of telegraph stock, the buying in of
81 four hundred other shares, and the sale of the latter?

Ans. I do not remember now. It happened so long ago, I have forgotten.

103. Question. Did you have any account showing that those transactions last named were with S. B. Keys & Co.?

Ans. I do not remember. I was under the impression that they were, but I won't be sure of that now.

104. Question. Are you sure that the four hundred shares you have referred to were ever actually bought in; and, if so, how do you know they were?

Ans. I know I saw it, and signed the transfer of the certificate the day that Robert told me it was best to sell it.

105. Question. And about what time was that?

Ans. I did not remember the time myself. Some time in the
82 summer of 1870, I think.

106. Question. Did you read the certificate at that time, so as to be sure it was of four hundred shares, or did you depend upon Robert's statement about that?

Ans. I knowing I had the four hundred shares, it is likely I would have looked at the numbers. I do not think it is likely I would have signed a paper to see what it was.

107. Question. Might you not have signed your name to more than one certificate at that time?

Ans. I was under the impression that I signed but one; so many things have transpired, and it is so long ago that it is impossible for me to remember everything I ever did.

108. Question. The day that you left Cincinnati to start for Europe, you sent for the box. Who brought it to you?

83 Ans. I sent my daughter for it, and Robert brought it to me with her. She came back with him, as near as I can recollect.

109. Question. And was it then opened in Robert's presence by him or by you?

Ans. It was not opened by either of us in my presence.

110. Question. When had you last, previous to that time, seen the contents of that box?

Ans. I cannot remember.

111. Question. When you verified the petition in this case were you not under the impression that you saw the contents of that box just before you left Cincinnati for Europe?

Ans. I don't remember the dates. I supposed what I placed there was there, or I should never have left for Europe.

112. Question. You drew several checks on your bank account
84 on the day you left Cincinnati or the day before, three checks being charged to you on the pass-book as of date June 20th, 1871, and none after that except one, June 26th, for one hundred dollars, which you drew at Cleveland. In view of these facts, what is your best recollection as to date when you left Cincinnati?

Ans. I don't recollect the date. I was at the Burnet House from the first of June until I left. For about two weeks, perhaps more. Not so much as three, I am sure.

113. Question. You took no considerable sum of money with you from Cincinnati in cash or exchange, did you?

Ans. I did not.

114. Question. About what time was the loan of fifteen thousand dol-

lars made to M'r G. Simon, and who attended to make that loan for you?

Ans. I think it was about 1868. I heard that M'r Simon wanted
85 the money from Robert, & I did it with General Burnett's advice.

115. Question. Who handed the money to M'r Simon, and was it by check or in currency?

Ans. That I don't know. All I know is that he got the money. I do not know who handed him the money.

116. Question. Did your check on your bank account for it?

Ans. That I don't remember.

117. Question. Do you remember what was sold, if anything, to produce that money?

Ans. That I don't remember.

118. Question. Is it not your impression that the money loaned to Simon was the deferred payment made by M'r Glenn on account of purchase of house at Avondale?

Ans. It is.

86 119. Question. Has there ever been more than five thousand dollars of the loan to Simon paid back, and about what time was that paid?

Ans. That is all that I have ever received. As to the time, I don't remember exactly. It was a year or more before I went to Europe.

120. Question. And when did he stop paying interest, as far as you know?

Ans. I don't know when he stopped. There was one payment after I went away; more after.

121. Question. Of the cash payment of twenty-five thousand dollars you received from M'r Glenn, you think fifteen thousand dollars went into government bonds. Have you any recollection or impressions as to what was done with the other ten thousand?

Ans. Some of it went to pay debts, the greater portion.

87 122. Question. Have you any memorandum or means of stating the numbers of the government bonds that were bought, or of what class or description they were? Did you ever know anything as to those matters?

Ans. I have not any memorandum. I never knew the numbers. I did know the class of the bonds at the time, but I do not know now.

123. Question. Was it your understanding that any or all of those bonds first purchased were sold, and other bonds bought?

Ans. I don't remember anything about the bonds—only what I have said about them.

124. Question. Did Robert never report to you the sale of some or all of those bonds previous to your going to Europe?

Ans. No; he did not, of the ten thousand bonds. I never knew they were sold until 1873.

88 125. Question. About what time did you purchase the property where you afterwards resided, on Walnut Hills?

Ans. I think about 1868. On looking at the deed, I see it is October the 29th, 1868.

126. Question. Please look at the contract between you and Simon, and state if you can recollect the date of the loan to Simon?

Ans. The 27th day of September, 1866.

127. Question. Our information is that you paid ($22,000.00) twenty-two thousand dollars for the house on Walnut Hills, and expended about three thousand dollars in improvements on the place. Is that according to your recollection?

Ans. Something about that.

128. Question. What was your impression as to where the money came from for that investment?

89 Ans. It came from property belonging to myself.

129. Question. Was it your impression that it was part of the proceeds of the sale of the place at Avondale, or the proceeds of the telegraph stock left to you?

Ans. It was some of both.

130. Question. Do you still hold the place on Walnut Hills?

Ans. I do. I think I do. I am not sure of anything.

131. Question. Do you still hold the Simon mortgage?

Ans. I do.

132. Question. Have you still the pass-book which you kept with the banking-house of E. Kinney & Co.? If so, please allow the notary to take copy of same.

90 Ans. I do not know what has become of it.

133. Question. Had you or your children any other property or income than that left by your husband?

Ans. No.

134. Question. When the purchase of government bonds was first made, was R. W. Rickey with E. Kinney & Co. at that time; & do you remember whether you checked on your bank-account to pay for the bonds?

Ans. Robert Rickey was with Kinney & Co. About the check I do not remember.

135. Question. Will you please procure and furnish, to be annexed as exhibits, a copy of your bank-account as it appears on the ledger of E. Kinney & Co. and Fourth National Bank, and the defendant paying any expense to the clerk for making the same?

Ans. I will if I can get them.

91 136. Question. Are you able to state now on what day of the month or week in 1871 you left the Burnet House for Cleveland, being on your way to New York and Europe?

Ans. I believe the books at the Burnet House show that it was on the 20th of June after tea. I think that is correct, as far as I can tell.

137. Question. Please examine copy of your ledger-account with E. Kinney & Co., and state as nearly as you can now recollect from what source you derived the moneys deposited to your credit in April and May, 1865, amounting to $5,634.40.

Ans. I made sales about the premises after my husband's death, particularly horses and carriages and some of the household furniture. Those credits I think are from the proceeds of such sales, except two items, namely, first item for $2,952.40, which, from the voucher now shown to me, I think it money paid to me by the executors, &

92 the item of $500, which was paid to me by R. W. Rickey on his note to the estate.

138. Question. Do you recollect whether, when those deposits were made with E. Kinney & Co., you went personally to E. Kinney & Co. with the money to the bank?

Ans. I don't remember. I don't remember anything about that.

139. Question. Look at the item of credit of July 10th, 1865, for $520.00, and state as nearly as you can where that money came from.

Ans. I sold a corner off my lot at Avondale for about $700, and I think this credit came from that; but, as now shown to me, the credit is

only for $520 *dollars*, so it could not be from that. I never deposited so small an amount as that ($520) I am very certain.

140. Question. Look at item of August 9th, 1866 ($25,000.00),
93 and state where that money came from.

Ans. That is from M'r Glenn, on the sale of the house.

141. Question. What investments, if any, do you recollect making from that twenty-five thousand dollars ($25,000.00), looking at the amounts of the checks charged to you in said bank account, within two or three weeks after you received that money?

Ans. I recollect investing only in bonds; I think they amounted to fifteen thousand. I don't remember making any other investment.

142. Question. Do you think the bank would have paid out any of that money after it was deposited without your signature to a check?

Ans. I think they ought not to.

143. Question. Do you think that you did not sign the three checks charged to you within three weeks after that deposit, amounting
94 to over $21,800.00?

Ans. I don't remember; but I suppose I must have signed them.

144. Question. Did M'r Glenn hand the twenty-five thousand dollars to you personally; and, if so, whether in currency or in check?

Ans. He gave it to me in a check. I am pretty sure he gave it to me personally.

145. Question. In the next month, to wit, Sept. 29th, 1865, you appear to have deposited two thousand dollars ($2,000); have you any recollection where that came from?

Ans. By the account now shown me, that came from the executors.

146. Question. Who attended to the purchase of those bonds for you?

Ans. R. W. Rickey.

95 147. Question. In October 4th, 1865, you appear to have drawn a check for two thousand and nine dollars and forty cents (2,009.40), and on October 5th, 1865, two thousand and nineteen dollars (2,019.80) and eight' cents; have you any recollection about those checks?

Ans. I do not recollect anything about them. I know I never drew two thousand dollars on two successive days for personal expenses.

148. Question. In 1866, Feb. 7th, you appear to have opened an account at the Fourth National Bank by depositing the sum of five hundred dollars ($500.00). Can you state where that money came from?

Ans. I don't know where that five hundred came from; I don't remember.

149. Question. Look at the credit for deposits in March, 1866, to wit: On March 2nd, $203.08; March 17th, $509.20; March 28th,
96 $1,330.00; March 29th, $511.65; March 31st, $2,047.40—amounting to about $4,600 in the aggregate. State, if you know, where any of the items came from.

Ans. I don't know where either of those items came from. I don't remember.

150. Question. Had you any other source of income during that month other than the interest on the government bonds, if any became due in that month; if so, from what?

Ans. I don't remember. I don't know where those credits came from. I had no productive property at the time, except those bonds.

151. Question. Can it be that you went to the bank five times during that month and made those large deposits, and yet have forgotten it?

Ans. I think I should have remembered.

152. Question. In the next month, to wit, April 3rd, you appear
97 also to have deposited $2,047.35. Have you any recollection of that, or where the money came from?

Ans. I have no recollection of that.

153. Question. On May 14th, same year, you appear to have checked for $4,504.30. Have you any recollection what that could have been for?

Ans. I think that was for a monument, and was in addition to five hundred which I had previously paid.

154. Question. On July 9th, 1866, you appear to have deposited $1,035.00, and on the 26th, $358.00. Have you any recollection where those moneys came from?

Ans. No, sir; I have not. I do not recollect anything about it.

155. Question. And on Aug't 9th you are credited with $600.00, August 15th, $400.00. Can you form any idea where that money came from?

Ans. I can form no idea, unless it was interest on the bonds.

98 156. Question. In what months of the summer were you absent from Cincinnati?

Ans. I don't remember when I went, nor when I came home. I remember when I was away. I don't remember the exact time. I don't think I was home in July and August.

157. Question. In the next month, September 12th, you appear to have received from M'r Glenn $15,907.50, and deposited it to your credit. On the 27th of the month you drew a check for $15,520.00. State if you recollect what that check was for.

Ans. I think that must have been for money loaned to Simon on mortgage—only I think the loan to Simon was $15,000.00 even.

158. Question. On January 8th, 1867, I see you are credited with a deposit of seven thousand and ninety-eight dollars ($7,098.00). What money is that, or where did that come from?

99 Ans. I think it is from the sale of the Russian extension stock.

159. Question. On Feb. 16th, 1867, you are credited in bank with five thousand dollars ($5,000.00), and on March 5th, same year, two thousand dollars. Have you any idea where that money came from?

Ans. I have not.

160. Question. Had you any other source of income during those months, so far as you know, except the interest on the government bonds you have referred to, and interest accruing on the loan to Simon?

Ans. I don't remember.

161. Question. Have you any recollection of directing the sale of a part of the government bonds at any time after they were purchased?

Ans. As far as I recollect I never did up to that time, 1867. When I bought my house I sold some government bonds, but that was in Nov., 1868, I think.

100 162. Q. In 1868, March 13th, you appear to have deposited $1,300.00; have you any idea where *there* that money came from?

Ans. I don't remember.

163. Question. These several deposits that I have been asking about, made during the proceeding year, do you think you knew about them at the time, or were they matters that M'r Rickey attended to?

Ans. If I did know about them I have forgotten.

164. Question. Do you recollect whether you kept your pass-book

with the bank yourself at that time, and took it to the bank & away from the bank every time there was an entry made to your credit?

Ans. I did not. I left my bank-book there at the bank, not all the time, but a good deal of the time.

101 165. Question. I see that by your bank account that a day or two after you deposited $7,098.00 from sale of Russian extension stock, you appear to have checked for $7,075.75; can you state what investment was made with the check?

Ans. I suppose bonds were bought with it.

166. Question. On March fifth, 1867, you are credited with $2,000.00 deposited; can you state where that money could have come from unless from the sale of bonds or stock?

Ans. I don't remember. I can't remember now.

167. Question. And in July 31st, 1867, you appear to have been credited in bank with $2,698.00; on Oct. 2nd, same year, with $750 *dollars*; do you think that you have handed the money to M'r Rickey with which to make the deposits, or that you handed the money

102 to the bank yourself, or that it was a matter that M'r Rickey attended to without any particular knowledge of the transaction on your part?

Ans. The deposit in July I don't remember about. I suppose it must have been Robert buying and selling my stocks and bonds while I was away. As to the $750.00, it may have been interest on the bonds.

168. Question. On Feb. 4th, 1868, you are credited with $3,673.08; is it your impression that you handled as large an amount of money as that at that time in that month?

Ans. I think not.

169. Question. In 1868, November 2nd, you are credited in bank with $2,762.50; on the fourteenth of the same month, $1,600.00; and on the 16th with $2,700.00; have you any recollection about those monies?

Ans. I think that came from the sale of bonds made for the

103 purpose of making first payment on house on Walnut Hills.

170. Question. Do you recollect how much more than that first payment has been made on that house?

Ans. It is all paid but five thousand dollars ($5,000.00).

171. Question. In 1869, May first, you are credited in bank account with $16,729.05; have you any recollection where that money came from?

Ans. I presume that is from the sale of my three hundred and ninety shares of Western Union stock.

172. Question. And your recollection is, that shortly after that Robert told you he had bought in four hundred shares for you?

Ans. Yes, shortly after.

173. Question. I see in your bank account you are several times

104 credited with a call loan; did you ever know how you could get a credit by making a call loan?

Ans. I never did; I don't know anything about it.

174. Question. At the time you left Cincinnati, on your way to Europe, had you any knowledge of the state of your bank account; that is, whether you had a balance to your credit, or whether your account was overdrawn?

Ans. I supposed it was all right. Robert told me it was.

175. Question. July 18th, 1871, there appears to be deposited to your credit $964.33, that being the amount to which your account was on that day overdrawn; could you have furnished the money to make that deposit?

Ans. I don't know, not being here. I arrived in Europe 6 days before that date. I was not aware that my account was overdrawn to
105 that extent, or I should not have gone.

176. Question. I see by the records that on the 18th August, 1873, you made a mortgage to J. D. Cox, trustee, to secure to Edward Silley the sum of $899.04, and F. Mock the sum of $107.50; to Duncan, Sherman & Co. $2,211.42, and to Schott & Co. the sum of $5,872.00; those debts were a part of your expenses while in Europe, were they not?

Ans. They were.

177. Question. Have you any recollection about how much money you expended in improving the place you bought on Walnut Hills, including grading, planting, and making walks, &c.?

Ans. I have not.

178. Question. Was it not in the neighbourhood of two or three thousand dollars?

106 Ans. I think not more than two.

179. Question. Did not M'r Rickey spend a thousand dollars in building a barn on the ground?

Ans. He built a barn that they say cost a thousand dollars, but I don't think it cost more than five hundred.

180. Question. Were your checks returned to you from time to time?

Ans. There were checks returned to me from time to time. I will not say that they were all returned.

181. Question. These seven checks, now present, on E. Kinney & Co., you recognize as signed by yourself, do you not?

Ans. They are signed by myself.

182. Question. Do you recollect seeing at any time those returned to you, checks signed E. E. Davenport, per R. W. R. or R. W. Rickey?

107 I do remember seeing them.

Re-examination of Euretta E. Davenport by John F. Follet, esq,:

1. Question. State whether or not you saw, on the 20th June, 1871, previous to your leaving the Burnet House, or at any other time, the certificate of the stock of the Western Union Telegraph Company, No. 15363, to your daughter, Katharine J. Davenport.

Ans. I did not see it on the 20th of June. I can not remember now when I did see it, previous to that time. I did not see it until after that time, until quite recently.

2. Question. Did your brother, Robert W. Rickey, accompany you when you left Cincinnati on the 20th June, 1871?

Ans. He did not.

108 3. Question. When and where did you next see him after that time?

Ans. I saw him in New York City a day or two before I left for Europe. I think I found him there when I arrived in New York. I sailed for Europe on the first day of July, 1871.

4. Question. Will you look again at the book, a copy of the entries on which are hereto attached, purporting to be your pass-book with the Fourth National Bank, and state whether or not, as you are now advised, it is in fact what it purports to be, or if you know what it is?

Ans. It is not my pass-book of the Fourth National Bank. I do not know what it is.

(Copy of book referred to is annexed, marked "Exhibit K.—J. M. Dawson, N. P.")

EURETTA E. DAVENPORT.

109 HENRY W. DAVENPORT, of lawful age, being by me duly sworn, deposes and says:

1. (Question by J. F. Follett.) State your name, age, residence, and occupation.

Ans. My name is Henry Wade Davenport. I shall be twenty-one years of age the 25th April, 1875. Residence is now at Susquehana Depot, Pennsylvania. From January, 1874, I was assistant draughtsman on the Erie Railway for about six months. Then my name was put on the books as a machinist, in which occupation I am now employed.

2. Question. State the name of your father and mother, and whether they are living or dead.

Ans. My father's name is Charles Davenport, who is dead. My mother's name is Euretta Elizabeth Davenport, who is now living.

110 3. Question. When did your father die, and where were you living at the time of his death?

Ans. My father died on the 14th March, 1865. I was living at Avondale at the time.

4. Question. Who was appointed your guardian after your father's death? and state what property you received from your father's estate, as near as you can recollect.

Ans. My mother was my guardian, and I received three hundred and ninety shares of Western Union Telegraph stock, as far as I can recollect.

5. Question. Have you ever examined the settlement of the account of the executors of your father's last will and testament to ascertain what property you were entitled to under the provision of his said will as shown by said accounts?

Ans. I never have.

111 6. Question. Where were you during the year 1871?

Ans. In the year 1871, I was in Vevay, Switzerland, at school.

7. Question. When did you leave Cincinnati for Europe, and when did you return to Cincinnati from Europe?

Ans. I think I left Cincinnati on the 9th July, 1870, and sailed from New York on the 12th July. I remained in Europe until the 5th of Dec'r, 1873, and arrived in this count'y about the 20th.

8. Question. Previous to your leaving this count'y for Europe in 1870, as you have stated, did you at any time see any certificate or certificates for the three hundred and ninety shares of Western Union Telegraph stock belonging to you, as you have stated?

(Objected to as leading by counsel for def't.)

Ans. I never did.

112 9. Question. Look at the certificate of stock now shown you, a copy of which is hereto attached, marked "Exhibit A," and state when you first saw the same.

Ans. The first time I first saw it was on the 16th December, 1874, in the office of Cox and Follett.

10. Question. Look at the signature, "Henry Wade Davenport," to the pretented transfer or warrant of attorney to transfer said certificate of stock, and state whether it is your signature, and what, if anything, you know about said signature.

Ans. It is not my signature, and I do not know anything about it.

11. Question. Where were you on the 23rd day of February, 1871? and state whether or not you know R. W. Rickey, and whether he was with you upon that day.

Ans. On the 23rd day of February, 1871, I was in Switzerland. I do know R. W. Rickey. He was not with me on that day.

113 12. Question. Where had you last seen R. W. Rickey, previous to the 23rd day of February, 1871, and when did you next see him?

Ans. The last time I saw him was about the eighth of July, 1870, previous to the 23rd day of February, 1871. I next saw him in Susquehanna Depot, in 1874.

13. Question. State whether or not the signature "Henry Wade Davenport," as it appears upon the said certificate of stock at the end of the pretended transfer thereof, to wit, certificate number 15362, for three hundred and ninety shares of the stock of the Western Union Telegraph Company, was written by you in the presence of R. W. Rickey, or was written by you at all.

Ans. It was not. It was not written by me at all.

14. Question. State whether or not you ever authorized any one to transfer said certificate of stock, or in any manner to sell or dispose of the same.

114 Ans. I never did. I never had authority to do it.

15. Question. How old were you on the 23rd day of February, 1871?

Ans. I was 16 years old. I was seventeen on the following April.

16. Question. State whether or not, to your knowledge, you have received any part of the proceeds of the sale of said stock under said pretended transfer, or been otherwise benefited by such sale or attempted transfer.

Ans. I never have.

17. Question. When did you first learn of the attempted transfer of said certificate of stock?

Ans. In the summer of 1873, I think.

18. Question. Have you received any payment or dividend on said 390 shares of stock for which said certificate was issued to you since the 23rd day of Feb., 1871?

115 Ans. No; I have not.

19. Question. Look at the signature, "H.W. Davenport," upon a passport given to you by the legation of the United States of America in France, under date 9th August, 1870, and which passport is marked for identification by the notary public with the style of the case, "J. M. Dawson, notary public," and state whether or not said signature was written by you, and when it was written.

Ans. It was. It was written on the 9th August, 1870, in the city of Paris, France.

20. Question. Have you ever had any other guardian than your mother, Euretta E. Davenport?

Ans. I never have.

21. Question. Are you familiar with the handwriting of your sister, Katharine Josephine Davenport?

Ans. Yes.

116 22. Question. Look now at the signature, "Katharine Josephine Davenport," attached to the pretended transfer of certificate number 15363, a copy of which is attached to this deposition, marked "Exhibit B," and state whether or not it is the genuine signature of your said sister.

Ans. It is not.

23. Question. How many children did your father Charles Davenport leave surviving him?

Ans. He left two, my sister Katharine and myself.

Cross-examination by J. C. Collins, esq.:

1. Question. Did you ever have any income of your own prior to your return from Europe in Dec., 1873?

Ans. I never did.

117 2. Question. How long have you been in receipt of a salary, and how much?

Ans. I received a salary of fifty dollars a month when I was assistant draughtsman on the Erie Road. When I went into the shop, I received two dollars a day.

3. Question. Did you ever keep an account of your expenses prior to 1874?

Ans. I never did.

4. Question. Who furnished you money to pay your expenses?

Ans. My mother paid my expenses.

5. Question. When did you last see R. W. Rickey, and where?

Ans. The last time I saw R. W. Rickey, he was passing through the railway shops at Susquehanna depot in Pennsylvania, he being there to pay the men. In Nov., I think, 1874.

118 6. Question. Has he employment at present on the Erie Road; and, if so, where is his residence or headquarters?

Ans. He has. He lives part of the time at Port Jervis, and part in New York City.

7. Question. How many times have you seen him since you returned from Europe?

Ans. I don't remember; only a few times.

8. Question. When did you see him, did you ask him why he signed his name as a witness to your signature to the transfer of that stock, or tell him that you never made that signature?

Ans. I never spoke to him at all since I returned from Europe.

9. Question. Were you on good terms before you went to Europe?

Ans. Not on extraordinary good terms.

10. Question. You called on him frequently for money, did you not?

119 Ans. No; never.

11. Question. Did you ever see the tin box in which the stock and bonds are said to have been kept?

Ans. Yes.

12. Question. On what occasion and how long was it?

Ans. I went to the bank once with my mother and saw it. That is the only time I ever remember seeing it. I should say it was about ten or twelve inches long, about seven or eight inches wide, and about five inches high.

13. Question. Do you remember what the occasion was for going to the box at that time, and did you see the contents of the box?

Ans. I don't know anything about why we went there. I did not see the contents of the box.

120 14. Question. Do you consider yourself an expert at judging handwriting?

Ans. No; I do not consider myself an expert.

15. Question. Can you say upon a comparison of the signature to the transfer of your stock with the signature to the transfer of your sister's stock whether they were both written by the same hand?

Ans. I am not sure whether they are or not.

16. Question. Will you please produce specimens of your handwriting

as well as your signatures prior to your going to Europe, or, if you have none of that period, produce any written prior to April, 1873.

Ans. I will look for specimens and produce them if possible after next adjournment, and authorize the notary to annex or identify them in such a way as shall be agreed upon by counsel.

121 17. Question. Do you recollect of seeing the tin box in which your mother's papers were kept at the Fourth National Bank only once?

Ans. I only remember seeing it once.

18. Question. What has impressed that upon your memory?

Ans. Because I don't think I ever saw it more than once. I don't recollect particularly what caused me to recollect that.

19. Question. Do you remember what time of day it was when you saw it at that time, or who was present?

Ans. I do not remember exactly what time of day it was; I think it was in the forenoon. My mother and I were the only ones present with R. W. Rickey.

20. Question. Did you see where the box was taken from by R. W. Rickey; that is, where he kept it?

Ans. I think he took it out of the safe.

122 21. Question. Do you recollect whether it was open at that time; and, if so, who opened it?

Ans. I believe it was opened. I don't know who open it. I did' pay much attention to it.

22. Question. Do you remember whether it was placed on the counter, or whether it was taken into a side office?

Ans. It was taken into a side office, in the back office of the Fourth National Bank. It was a room in the rear of the main office. I do not know how it was used. It had a table, carpet, and chairs; fitted up for an office.

23. Question. Can you state in what month, in what year that was?

Ans. No; it was a good while ago; I don't remember.

24. Question. It was before you left for Europe, of course?

123 Ans. A good while ago, I think, before I left for Europe.

25. Question. Were you ever informed before you left for Europe that you were the owner of three hundred and ninety shares of the Western Union Telegraph stock; and, if so, by whom?

Ans. I knew that I had some telegraph stock, but how much or how little I did not know. I think my mother gave me that information.

26. Question. Were you informed also that that was all the property you had?

Ans. That was all I ever heard of.

27. Question. Were you informed whether your telegraph stock was paying dividends before you went to Europe?

Ans. I don't remember.

28. Question. Do you know what your individual expenses amounted to for two years prior to your going to Europe and while in Europe?

124 Ans. I don't think they amounted to very much. That I don't know anything about. I kept no account of them.

29. Question. Did you and your sister while in Europe live at the same hotel?

Ans. No; I was at a boarding school; my mother and sister were together.

30. Question. You have said in your examination-in-chief that you got none of the proceeds of the sale of your telegraph stock; where did you

get money, then, with which to pay your expenses for five years prior to your return from Europe?

Ans. I did not pay my expenses. My mother paid them.

31. Question. You don't mean to say, then, that she may not have received the proceeds of the sale of your telegraph stock and used them in paying your expenses?

125 Ans. I only knew that bills were paid as far as I know anything about it.

32. Question. Did you ever hear anything said before you went to Europe as to the market value of telegraph stock; and, if so, what?

Ans. I never paid any attention to stocks or business of any kind before I left for Europe.

HENRY WADE DAVENPORT.

126 KATHARINE J. DAVENPORT, of lawful age, being by me first duly sworn, deposes and says:

1. (Question by J. F. Follett.) Please state your name, age, and present residence.

Ans. Katharine Josephine Davenport is my name; age, 18 years the 3rd November, 1874. I live in Cincinnati.

2. Question. State whether or not your father is living; if not, when he died, and the names of your father and mother.

Ans. My father is dead. He died in March, 1865. Euretta E. Davenport is my mother's name; Charles Davenport my father's name.

3. Question. With whom have you resided since your father's death, and who is your guardian?

Ans. I have resided with my mother, and she is my guardian.

127 4. Question. State whether or not you received any property under the provisions of your father's will; and, if so, the kind and amount of such property.

Ans. I do not personally know anything about it, but I have heard that my mother as my guardian received for me 390 shares of Western Union Telegraph stock.

5. Question. Look at the certificate No. 15363 of the Western Union Telegraph Company stock now shown you, a copy of which is hereto attached, marked "Exhibit B," and state when you first saw it, and whether or not you are the person to whom said certificate was issued.

Ans. Now is the first time I have ever seen it. I suppose I am the person to whom such certificate was issued.

6. Question. Look also at the signature Katharine Josephine Davenport as it appears on the back of said certificate of stock, and purporting to be a signature to the transfer of said stock, & state whether

128 or not it is your signature; and, if not, whether you know who wrote it.

Ans. It is not my signature, and I do not know who wrote it.

7. Question. State whether or not said certificate was attached to said transfer on the back of said certificate of stock by your authority, or with your knowledge or consent.

Ans. I do not know anything about said signature. It was not done by my authority or with my knowledge or consent.

8. Question. Where were you on the 20th day of June, 1871?

Ans. My recollection is not very distinct, but I think it was on the evening of 20th of June, 1871, that I left the Burnet House for New York, by way of Cleveland.

9. Question. Did you see said certificate of stock No. 15363 on said day, to wit, June 20th, 1871, or at any time about that time?

129 Ans. No.

10. Question. Look again at said signature, Katherine Josephine Davenport, on both of said certificate No. 15363, and state whether or not the name Katherine as there written is spelled as you spell your name; and, if not, what the difference is.

Ans. I always spell my name with an "a." On the back of this certificate it is spelled with an "e"; that is, Katherine instead of Katharine, as I always spell my name.

11. Question. State whether or not you have at any time either sold or transferred, or authorized any one else to sell or transfer, any stock belonging to you, or which has at any time belonged to you, in the Western Union Telegraph Company?

Ans. No.

Cross-examination by J. C. Collins, esq.:

130 1. Question Can you state how the name Katharine is usually spelled, whether with an "a" or with an "e" in the second syllable?

Answer. It is usually spelled Katharine. When the first letter is "K," it is usually spelled Katharine; when the first letter is "C," it is usually spelled Catherine.

2d question. Is it customary in this country to spell the name commencing with "K," instead of "C," with persons born in America?

Answer. No; I think not; but I know several cases in which it was so spelled by persons born in this country.

3. Question. Are you quite sure that you never wrote your name with an "e" in the middle syllable, instead of an "a," prior to June 20th, 1871?

Answer. I am.

4th question. State whether your uncle, R. W. Rickey, knew how you were in the habit of spelling your name prior to June, 1871?

131 Ans. I do not know.

Question 5th. Look at the signature R. W. Rickey, purporting to be signed as a witness to your signature to the transfer of stock in question, of which Exhibit B is a copy, and state whether it is the genuine signature of R. W. Rickey; that is, whether it is in his handwriting.

Answer. I do not know whose writing it is.

Question 6. Were you acquainted with his handwriting in June, 1871–'3; that is, had you seen him write frequently?

Answer. No.

Question 7. Are you an expert in judging handwriting, so that you can tell a genuine signature from one that is an imitation of it?

Ans. No.

Question 8th. Do you think you could tell or distinguish your own signature, in your own hand, from one that is a close imitation of it?

Ans. Yes.

132 Question 9th. In what way?

Ans. I don't know, except by the formation of the letters, comparing them.

Question 10th. You say the signature on the certificate is not in your hand; state fully in what respect it is different.

Ans. I never wrote so well as that, in so small a hand. I wrote a large hand. I don't see anything else to distinguish it by except the spelling.

Question 11. Did you ever see the tin box in which your mother's papers were kept at the Fourth National Bank?

Answer. I have, the day we left Cincinnati for New York, on the way to Europe.

Question 12. Where was it, on that day, that you saw it?

Ans. At the Burnet House, in my mother's room.

Question 13. Who brought it there, and was it opened there?

133 Ans. M'r Rickey had it, and brought it there, as far as I know. I did not see it opened.

Question 14. What conversation, if any, did your mother have with M'r Rickey about it at that time?

Ans. I don't remember. I did not pay attention.

Question 15. How long did the box remain there in your mother's room?

Ans. I do not know.

Question 16. Do you know whether M'r Rickey left it there or took it away with him?

Ans. I think he took it away.

Question 17. Do you know for what purpose it was brought there?

Ans. No.

Question 18. Did you hear any talk that day between your mother and your uncle as to money affairs?

134 Ans. I remember hearing them talk, but I do not remember what the conversation was.

Question 19. Were you ever informed as to what source of income you had for your maintainance and education?

Ans. No.

Question 20. Did you ever suppose that you had, of your own right, any property at all? Were you advised on that point prior to June, 1871?

Ans. I had heard that I had some telegraph stock, and that was all that I had heard that I had. I had heard that I had three hundred and ninety shares.

Question 21. Had you heard prior to June, 1871, whether your stock was paying any dividend or not?

Ans. No, I had not.

Question 22. Had you heard anything said about the value of

135 the stock, and whether or not it was good stock to keep?

Ans. No.

Question 23. You had entire confidence in your mother and your uncle, R. W. Rickey, I suppose, before you left for Europe?

Ans. I had.

Question 24. If they had either or both of them asked you at that time to sign a paper relating to business you would have done so without hesitation, would you not?

Ans. Yes.

Question 25. Who did you understand to be assisting your mother in the management of her business or money affairs before you went to Europe?

Ans. Robert Rickey.

136 Question 26. Will you please to furnish any specimens of your handwriting or signatures which you can find made prior to June, 1871, also any that have been made since?

Ans. I will authorize the notary to annex or to identify them in such a way as shall be agreed upon by counsel.

Question 27. Have you any knowledge as to what your individual expenses were for three years prior to your going to Europe or while you were in Europe?

Ans. No.

Question 28. Do you recollect whether you heard, before you went to Europe, that your mother had sold her Western Union Telegraph stock?

Answer. I remember hearing it. That is all I remember about it.

Question 29. Do you recollect what reason, if any, was given for such a sale being made?

137 Ans. No, I don't.

Question 30. Do you recollect whom you heard it from?

Ans. Henry, I think; I am not sure.

KATHARINE JOSEPH. DAVENPORT.

138 *Copy of exhibit marked "A" by counsel for plaintiff.—J. M. Dawson, Notary Public.*

I

ncorporated. Incorporated.

THE WESTERN UNION TELEGRAPH COMPANY.

Certificate No. 15363.] [Shares, 390.

Henry Wade Davenport is entitled to three hundred and ninety (390) shares of one hundred dollars each in the capital stock of the Western Union Telegraph Company, transferable in person or by attorney on the books of the company only on the surrender and cancellation of this certificate by an endorsement thereof thereon, and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president and secretary of the said company have hereunto subscribed their names, at the city of New York, this 13th day of May, 1867.

HIRAM SIBLEY,
*V. President.*

O. H. PALMER, *Secretary.*

[U. States 25c. Power of att'y. Int. revenue.]

(Across the face:) Cancelled.

139 For value received , do hereby sell, assign, and transfer to Souther & Co. three hundred and sixty, and the W'm Heath & Co. thirty (390) shares of the capital stock of the Western Union Telegraph Company, of one hundred dollars each, standing in name on the books of the said company, and represented by the within certificate, and do hereby irrevocable cons'itute and appoint J. D. Thompson my attorney, to execute a surrender and cancellation of the within certificate, & also to do all things requisite to transfer the said stock on the books of the said company, in such form and manner as may be necessary or be required by the regulations of the said company in that behalf, with full power of substitution in the premises.

Dated Feb. 23rd, 1871.

HENRY WADE DAVENPORT.

In presence of—
R. W. RICKEY.
SOUTHER & CO.

[25 c. int. rev. stamp.]

140 *Copy of exhibit marked "B" by counsel for plaintiff.—J. M. Dawson, Notary Public.*

Incorporated. Incorporated.

THE WESTERN UNION TELEGRAPH COMPANY.

Certificate No. 15363.] [Shares, 390.

Katharine Josephine Davenport is entitled to three hundred and ninety (390) shares, of one hundred dollars each, in the capital stock of the Western Union Telegraph Company, transferable in person or by attorney on the books of the company, only on the surrender and cancellation of this certificate, by an endorsement thereof hereon, and in the form and manner which may at the time be required by the transfer regulations of the company.

In witness whereof the president and secretary of the said company have hereunto subscribed their names, at the city of New York, this thirteenth day of May, 1867.

HIRAM SIBLEY,
*V. President.*

O. H. PALMER, *Secretary.*

[United States, 25 cents. Power of att'y. Int. rev.]

(Across the face:) Cancelled by the Farmers' Loan & Trust Company Jan. 23, 1871.

141 For value received I do hereby sell, assign, and transfer to Souther & Co. three hundred and ninety (390) shares of the capital stock of the Western Union Telegraph Company, of one hundred dollars each, standing in my name on the books of the said company and represented by the within certificate, and do hereby irrevocably constitute and appoint J. D. Thompson my attorney to execute a surrender and cancellation of the within certificate, and also to do all things requisite to transfer the said stock on the books of the said company, in such form and manner as may be necessary or be required by the regulations of the said company in that behalf, with full power of substitution in the premises.

Dated June 20th, 1871.

KATHERINE JOSEPHINE DAVENPORT.

In presence of—
R. W. RICKEY.
SOUTHER & CO.

[Int. rev. stamp.]

142 *Copy of exhibit marked "C, J. M. D., N. P.," shown by counsel for plaintiff.*

Received of F. Wetmore and J. N. Wade, executors of the estate of Charles Davenport, deceased, three hundred and ninety shares (390) in the Western Union Telegraph Company, being distributive shares of stocks in the hands of said executors, belonging to Henry Wade Davenport, heir of said Charles Davenport, deceased, as per account filed May first, 1867, with probate court. May first, 1867.

E. E. DAVENPORT,
*Guardian of H. W. Davenport.*

*Copy of exhibit marked "D, J. M. D., N. P.," shown by counsel for plaintiff.*

Received of F. Wetmore and J. N. Wade, executors of the estate of Charles Davenport, deceased, three hundred and ninety (390) shares of stock in the Western Union Telegraph Company, being the distributive share of stocks in the hand of said executors, belonging to Katherine J. Davenport, heir of Charles Davenport, deceased, as per account filed May 1st, 1867, with probate court of Hamilton County. May 1st, 1867.

E. E. DAVENPORT,
*Guardian of K. J. Davenport.*

*Copy of exhibit marked "E, J. M. D., N. P.," shown by counsel for def't.*

Received of F. Wetmore and J. N. Wade, executors of the estate
143 of Charles Davenport, deceased, three hundred and ninety (390) shares of stock in the Western Union Telegraph Company, being the distributive shares of stocks in the hands of the said executors belonging to me as legatee of said Charles Davenport, deceased, as per amount filed by said ex'ors with the probate court of Hamilton County, Ohio, May 1st, 1867, and also the R. W. Richey note referred to in the inventory filed by said executors, and also the book account against E. P. Davenport of $290, referred to in said inventory, also certificate 353 for $20, and 336 for $12.50, in Western Union Telegraph Company.
May 1st, 1867.

E. E. DAVENPORT.

[U. S. int. rev. stamp, 2 c'ts.]

*Copy of exhibit marked "F," shown by counsel for def't.—J. M. Dawson, N. P.*

Mess'rs J. H. Wade & Frederick Wetmore, executors of the estate of Charles Davenport, deceased:

You will please deliver to Mess'rs Mowry, Keys & Bend, of New York, all the Western Union stock (known as the Russian Extension) belonging or coming to me or my children, Henry Wade Davenport and Katharine Davenport, under the will of Charles Davenport, deceased.
Cincinnati, Oct. 4th, 1866.

EURETTA E. DAVENPORT.
144 EURETTA E. DAVENPORT,
*Guardian for H. W. & K. J. Davenport.*

*Copy of exhibit marked "G," shown by counsel for def't.—J. M. Dawson, N. P.*

Received, Cincinnati, April 25th, 1865, of J. N. Wade and Fred. Wetmore, executors of the estate of Charles Davenport, deceased, the sum of twenty-nine hundred and fifty-four $\frac{50}{100}$ dollars, on account of allotment for my own and my children's support.

EURETTA E. DAVENPORT.

Dollars, 2,954.50.

| | |
|---|---|
| Dividend ..... | 2,950 |
| Cash..... | 4 50 |
| | $2,954 50 |

[2 c'ts stamp.]

*Copy of exhibit marked "H," shown by counsel for def't.—J. N. Dawson, N. P.*

Dollars, 2,000.

Received, Cincinnati, Sept. 24th, 1865, of J. N. Wade and Fred. Wetmore, executors of the estate of Charles Davenport, deceased, the sum of two thousand dollars, on account of allotment for my own and my children's support.

EURETTA E. DAVENPORT.

(Voucher 5.)

[U. S. I. & R. stamp.]

145 *Copy of exhibit marked "I," shown by counsel for def't.—J. N. Dawson, N. P.*

Dollars, 500.

Received, Detroit, July 19th, 1866, of J. N. Wade and Fred. Wetmore, executors of the estate of Charles Davenport, deceased, the sum of five hundred dollars on account.

E. E. DAVENPORT.

(Voucher.)

[Stamp.]

*Copy of exhibit marked "J," shown by counsel for def't.—J. M. Dawson, N. P.*

Dollars, 2,000.

Received, Cincinnati, March 4th, 1867, of J. M. Wade and Fred. Wetmore, executors of the estate of Cha's Davenport, two thousand dollars, on account of myself and as guardian of my children.

EURETTA E. DAVENPORT.

[U. S. I. R. stamp.]

146 (For Exhibit K, see page 202. Misplaced in binding.)

*Defendant's testimony.*

Deposition of Samuel B. Keys, witness, taken before me, Daniel Henderson, a notary public, within and for the county of Hamilton and State of Ohio, on Tuesday the fifth day of May, A. D. 1875, between the hours of 8 o'clock a. m. and six o'clock p. m., at the office of Collins & Herron, No. 148 Walnut street, Cincinnati, Hamilton County, Ohio, pursuant to the annexed notice, to be read in evidence on behalf of the defendant in the said action.

Present, Hon. John F. Follett for plaintiff, and Isaac C. Col-
147 lins in behalf of defendant.

SAMUEL B. KEYS, of lawful age, being by me first duly examined, cautioned, and solemnly sworn, deposes and says:

Question. State your age, residence, and occupation, and what was your occupation from 1865 to 1871, inclusive.

Answer. I am fifty-one years of age; reside in the city of Cincinnati; am by occupation a stock-broker, and during the years men-

tioned was engaged in brokerage and a general stock business in Cincinnati, doing business as Samuel B. Keys & Co. Third s't, Cincinnati, buying & selling local stocks and securities as well as all the stocks and securities dealt in at the New York Stock Exchange. Our business with New York was generally done by telegraph; if done by letter, it was done by special orders.

Question 2nd. State how and by whom your business in New York was transacted in making purchases and sales.

148 Answer. Our business was principally transacted by Mess'rs Souther & Co. of No. 53 William street, but we also had an account with H. Holboler of No. 28 New street, N. Y., and Lockwood and Co. of 94 Broadway, New York, during a part of the time. We received securities in Cincinnati for remittance to New York for sale, and sold the same by telegraph, giving proceeds to the parties either in currency in Cincinnati or by check on New York, as they preferred. We also bought and sold gold and government bonds & such other securities as were quoted on the New York Stock Exchange on a margin according to the rules of the New York Stock Exchange.

Question 3. State what was the standing and responsibility of the firm of Souther & Co., bankers, No. 53 William street, in 1871.

Answer. Their standing was among that of "No. 1" bankers, and their responsibility unquestioned, having a very large business and a working capital of over half a million of dollars. The actual

149 worth of the partners during the year 1871, including that capital, was about a million of dollars.

Question 4. State whether you were acquainted with Robert W. Richey, in 1871; if so, how long had you been acquainted with him, what position did he occupy, and what was his standing and character as a business man in Cincinnati?

Answer. I was acquainted with him in 1871; my acquaintance began in 1867, by his opening an account with my firm; from that time down to the first day of July, 1871, he was for a portion of the time partner in the banking-house of E. Kinney & Co., of this city, and from the early part of 1869 to July first, 1871, he was the cashier of the Fourth National Bank of Cincinnati; after that period, for about one year, he was national bank-examiner for the State of Ohio. His character was that of a high-toned and honorable banker.

Question 5. State whether, in 1871 or prior thereto, your firm had

150 any business with M'r's E. E. Davenport; and, if yea, of what nature; give dates and amounts.

Answer. We did have business with M'r's Davenport, through R. W. Rickey. On the 29th day of April, 1869, R. W. Rickey brought to our firm a certificate of Western Union Telegraph stock, for (390) three hundred and ninety shares of one hundred dollars each, being numbered 15361, in the name of Euretta E. Davenport, with instructions to remit it to New York for sale for her account. We so remitted and sold the same, viz, (300) three hundred shares at (43⅛) forty-three and one-eighth, and ninety (90) shares at forty-three (43). The proceeds of which, amounting to ($16,729.05) sixteen thousand seven hundred and twenty-nine $\frac{05}{100}$ dollars, we paid to M'r's Davenport, by our check to her order, May 1st, following. On the 10th day of June we bought five hundred shares of the same stock for her at forty cents (40), on a margin, deposited by R. W. Rickey, of four thousand dollars. July the 2nd she paid the balance due and ordered the stock out from New York, which was delivered to her August 2nd, in four certificates, in her name,

151 of one hundred shares each, being numbers 24439 to 24442 inclu-

sive. May 15th, 1870, Rickey (R. W.) brought us the same certificates to be sold in New York for her account, which were sold on the fourth day of June, at 31½ cents. On June 7th, 1870, we paid R. W. Rickey, for her account, by draft on Souther & Co., No. 675, ten thousand dollars.

Question 6. In selling the five certificates for her that you have named above, state how the transfer was effected and witnessed, if you can.

Answer. I have never seen those certificates since, but my recollection is that this power of attorney for the transfer was signed by Euretta E. Davenport and witnessed by R. W. Rickey.

Question 7. State where she was residing at the time, and whether you ever heard any objection from her to the transaction, or had not received the proceeds of the sales.

Answer. I understood that she was residing in Cincinnati, but I
152 never saw her myself until after the first of January, 1873, nor did I ever hear of any objection that she had made to the sales at any time. I never heard her state that she hadn't received the proceeds of the sales, unless it was during the taking of her deposition in this case.

Question 8. State who attended to the business of M'r's Davenport, in Cincinnati, so far as your knowledge goes.

Answer. Her brother, R. W. Rickey.

Question 9. State now all that you know in regard to the sale and transfer of the certificate of 390 shares of Western Union Telegraph stock standing in the name of Henry Wade Davenport, and sold thro' your house in 1871.

Answer. On the 23rd February, 1871, R. W. Rickey brought to us a certificate of Western Union Telegraph stock, No. 15362, for (390) three hundred & ninety shares, in the name of Henry W. Davenport. The power of attorney attached to the certificate was signed Henry Wade Davenport and witnessed by R. W. Rickey. He instructed us to
153 remit it to New York for sale, and open an account with R. W. Rickey, "special," for that stock and proceeds. We remitted the stock that day to Souther & Co., N. Y., who sold it, according to our instructions, at 50 cents on the dollar. On the 27th day of February we paid R. W. Rickey, in draft on Soutter & Co., No. 900, thirteen ($13,000) thousand dollars, leaving a balance standing to the credit of R. W. Rickey, special, of $5,937.10. On March the 31st that balance was tranferred to the credit of R. W. Rickey, general account, and his special account closed.

Question 10. Had you any knowledge or suspicion at the time that certificate was brought to you by M'r Rickey, and you sent it to New York for sale, that Henry Wade Davenport was a minor, or that the signature to the power of attorney purporting to be his was not genuine?

Answer. Not the slightest—I had implicit confidence in the integrity of M'r Richey. He represented at the time that his sister and her children were without income sufficient to support them without
154 dividends from the Western Union Telegraph Company, and that they had been advised and determined to sell their stock; that Henry Wade Davenport was of age and either had gone or was about to go to Europe, and that his sister would be of age in a few months, when she proposed also to sell her stock, and then that she and her mother would join the son in Europe.

Question 11. State what interest, if any, you had or took in the transaction.

Answer. I had no interest whatever, excepting as a broker, receiving

the usual commission of a quarter per cent. & the telegraphs, that is the costs of the telegraphing.

Question 12. State then what you know of a subsequent sale in June of the same year of 390 shares of the same stock, standing in the name of Catharine Josephine Davenport.

Answer. On the 31st day of May, 1871, R. W. brought to us twelve thousand ($12,000) dollars of United States bonds, being
155 eight thousand dollars of the series of 1862, and four thousand dollars of the series of 1864, and asked us to make him or obtain for him a loan on the same for fifteen days, saying that his sister was about making her preparations to go to Europe, and that his niece would be of age in a few weeks and then they proposed to sell her stock and take up that loan; accordingly we borrowed from the Lafayette Bank of Cincinnati, on these bonds and on his note of fifteen days for twelve thousand dollars, twelve thousand dollars in cash & paid it to him; on the 20th day of June, Richey (R. W.) brought us a certificate for 390 shares Western Telegraph stock, No. 15363, in name of Catherine Josephine Davenport, with instructions to remit it by mail and telegraph the stock for sale to arrive, so that he could draw the money that day; that his sister and her daughter Catherine were at the Burnet House, expecting to leave that night for New York on their way to Europe and that they wanted the proceeds of the stock to letter their account and to take up the loan at the Lafayette Bank, in order
156 that they might receive their government bonds before they left. We accordingly remitted the stock that day by mail to Soutter & Co., sold it by telegraph "to arrive" at 60⅛ per cent., credited the proceeds to R. W. Rickey, took up the loan on the Lafayette Bank of twelve thousand dollars, charged Richey with the amount so paid to the Lafayette Bank, and delivered him the twelve thousand government bonds; afterwards, say July the 18th, we paid him twelve hundred dollars cash, August 15th five thousand dollars; so far as I know, the balance of proceeds of that sale of stock remained to the credit of R. W. Richey in his general account. The amount of money paid Richey by us on account of these certificates was realized by our draft on Soutter & Co., which they paid out of sales of this stock.

Question 13. State whether these two certificates last spoken of were sent to New York under any limitations as to price, and how soon they were sold after being transmitted?

157 Answer. The certificate in the name of Catharine, last described, was sent without any limitation; my recollection is that the certificate in the name of Henry, remitted on the 23rd Feb., was limited at fifty and sold on the 27th at that price.

Question 14. State, if you know, the custom in New York by which these shares were sold by Soutter & Co. were transferred on the books of the company in New York?

Answer. The usual rule with brokers who receive for sale a certificate of stock running over a numbered shares, is to send it to the transfer office of the company and have it transferred into new certificates for smaller amounts in their own names for the convenience of sale and delivery under the rules of the stock exchange. These certificates were sold by Soutter & Co., at the stock-board.

Question 15. In case Soutter & Co. did not sell the whole 390 shares to the same party, which course would be taken in its transfer? That is, supposing it were sold in parcels to different parties?

158 Answer. If they sold the stock to different parties before the certificate had been transferred to themselves, then they would have

the certificates transferred either directly to the parties that had purchased, if they had confidence in them, or therein transferred to themselves in suitable amounts to deliver to the parties with their assignment on payment of the money.

Question 16. Would the transfer of the shares into the name of Soutter & Co., on the books, indicate that Soutter & Co. became the purchasers?

Answer. Not at all.

Cross-examined by *by* Col. Follett, of counsel for plaintiff:

Question 1. Were not all the moneys received by you or the firm of S. B. Keys & Co., as proceeds of the sale of certificate 15362 in
159 the name of Henry W. Davenport, and certificate No. 15363 in the name of Catherine Josephine Davenport, paid to R. W. Rickey?

Answer. Yes, sir.

Question 2. Did you or not know, at the time certificate 15362 was sold, that Henry W. Davenport was in Europe?

Answer. All I know on that subject was what I have before stated, that M'r Richey told me that Henry W. Davenport either had gone or was about to go to Europe.

SAM. B. KEYS.

160 Deposition of witnesses taken in a cause pending in the circuit court of the United States for the southern district of Ohio, wherein Katharine J. Davenport, by her guardian, Euretta E. Davenport, is plaintiff and the Western Union Telegraph Company is defendant, and for said defendant, in pursuance of the notice hereto attached.

Present, Isaac C. Collins, esq., on behalf of defendant, and Henry L. Burnett, esqre., on behalf of plaintiff.

ROBERT W. RICKEY, of full age, being first duly sworn, testified as follows:

Q. Please state your age, present residence, and occupation.

A. My age is 38 years; residence, New York City; and occupation, paymaster of the Erie Railway Co.; my district extending over a circuit lying 200 miles west of New York City.

161 Q. State what your occupation has been, at various times since January, 1865, and also your residence during the same time.

A. From January 1st, 1865, to Feb. 1st, 1866, I was a member of the firm of E. Kinney & Co., bankers, in Cincinnati. From Feb'y, 1866, to July, 1871, I was teller and cashier of the Fourth National Bank, Cin'ti. Of this period I was teller during the first two years, and the rest of the time cashier. From July, 1871, to March, 1872, I was examiner of the national banks of the State of Ohio, appointed by the Secretary of the Treasury. From March, 1872, to January, 1873, I had no occupation. I was appointed to my present position as paymaster on the Erie Railway on Jan. 28th, 1873. My residence with my family was in Cincinnati until January 28th, 1873, and since that time it has been in New York City.

Q. Were you acquainted with the late Charles Davenport, of
162 Cincinnati? &, if yea, state what relation he was to you, and the time of his death.

A. I have been intimately acquainted with him for a number of years. He married my sister. He died in March, 1865.

Q. Please state where his widow, your sister, lived after his death; and whether near or far from your place of business.

A. From the time of her husband's death until August, 1865, she lived at Avondale, in the house in which her husband died. That was about four miles distant from my place of business. She then moved into the city of Cincinnati; and boarded at various places; part of the time at the Burnet House, and part of the time at private boarding-houses; being absent during the summer months at various watering-places. This continued Oct'r, 1868, when she bought a residence at East Walnut Hills, which was situated about three miles from my place of business. She resided at this place until the
163 first of June, 1871, when she rented her house to M'r Follett, and went to Europe to live. She remained abroad until the early part of the year 1873, when she returned to Cincinnati.

Q. State where her two children, Henry W. and Katharine J., lived during all that time after their father's death.

A. Henry W. Davenport resided with his mother until he went to Europe, except when he was at boarding school somewhere at the East, from which place he kept returning home. He went to Europe about a year before his mother did. Her object in sending him to Europe was to place him in a school where the discipline would be stricter than in the schools in this country. He remained in Europe until his mother returned, and a short time afterwards he came home. Katie was with her mother all the time until after her return from Europe.

164 Q. Who assisted or aided M'r's Davenport in business matters after her husband's death?

A. The executors of her husband's will, J. H. Wade and Frederic Whitmore, for about a year. It is a pretty hard question to answer as to who her advisers were.

Q. Where did she keep her bank account after her husband's death?

A. From the time of her husband's death until February, 1866, she kept her account with E. Kinney & Co., bankers. And from February, 1866, until July, 1871, she kept her account with the Fourth National Bank.

Q. Her account was transferred from E. Kinney & Co. to the Fourth National about the same time that you went to the Fourth National?

A. Yes, sir.

Q. Please state what property was left to M'r's Davenport by
165 her husband, including that left to the children; also, give as nearly as you can the dates of the sale of the same, and the amounts produced thereby, giving the latter so it can be put down in tabular form.

A. The house in Avondale, commonly called the homestead. That was all the real estate. Then there were 390 shares of Western Union Telegraph stocks to herself and 390 shares to each of her children. There was also some Russian extension stock. I don't know the number of shares. It was a stock in some way connected with the Western Union Telegraph Company. There was no other property, except some personal property contained in and about the homestead, the greater part of which she still retains. There was also a note for $5,000 which was my note, and which had been reduced to about $3,500 at the time of M'r Davenport's death. Since his death $500 have been paid, I think; but I am not certain as to this. This was all the property after the debts were paid. The property above referred to was sold as follows:

166 1865. Aug. 9, homestead sold for..... $40,000
1867. Jan'y 10, Russian extension stock..... 7,098

1869. May 1, 390 shares W. U. (being the certificate of M'r's D's stock) ..... 16,729 05
1871. Feb. 23, 390 shares of H. W. D ..... 18,937 10
1871. June 20, 390 " " K. J. D ..... 23,348 75

As to the sale of the two certificates lastly referred to, I may be mistaken as to the precise amounts realized; if so, they can be corrected by reference to the books of S. B. Keyes, through whom the stocks were sold.

Q. State now what productive capital, if any, M'r's Davenport and her children had during the years you have referred to.

A. Her only productive capital was the sum of $40,000 received from the sale of the homestead, of which amount she invested $15,000 in government bonds, and $15,000 on bond and mortgage to G. Simon at 10 per cent. interest. The excess of interest over six per cent. was put in separate notes of $300 each, payable every six months, and
167 the six per cent. was also payable semi-annually, but no separate notes given for it. This loan was not made until after M'r Glenn had made his final payment on the homestead. Of the first payment made by M'r Glen, which was $25,000, I think $5,000 were reserved, or temporarily invested to pay for a monument. Of this $25,000, I think only $15,000 was invested in government bonds.

Q. When M'r's Davenport purchased the house on East Walnut Hills in October, 1868, how much, if any, did that reduce her productive investments?

A. The house was purchased for $22,000. Of this sum, $6,000 was paid in cash and the balance secured by notes at one, two, and three years, for $5,333.33 each. The $6,000 cash was raised by the sale of some securities, I suppose bonds. I see that, by her account with the Fourth National Bank, she had but $810.62 to her credit at that time. I find three credits or deposits in her account within a few days of her first payment on the house, which I presume are from the
168 sale of bonds, but the deposit-tickets, if they are preserved, will probably show.

Q. State whether either of the mortgage notes which she made on the house was afterwards paid; and, if so, which, and out of what funds.

A. I do not find any payment at one year after the purchase, but I see a check after about eighteen months which I think must have been for the first note. The check was paid June 7, 1870, and the amount is $5,906.60. This check appears to have been paid from the proceeds of a sale of Western Union Telegraph stock. The account seems to show that the second note was paid by a check of April 18, 1871, for $5,521.60. Just previous, on the day previous, is a deposit of $5,000, which was money paid by G. Simon, in part payment of his loan. But whether those two checks paid the notes or not I am not certain, but I am sure the notes were paid through the Fourth National Bank. The
169 third note had not been paid when last I heard of it. I paid some interest on it before I left Cincinnati, which appears in the account as paid to B. T. Stone.

Q. Now please examine the accounts now shown you of M'r's Davenport with E. Kinney & Co.; also the account with the Fourth National, marked by the commissioner with his name and this date, respectively, as A and B, and state who generally made the deposits therein credited, or otherwise caused such credits to be entered.

A. All the credits and deposits, with very few exceptions, were made by me personally. I think very likely the credit of $25,000, proceeds of

the sale of the homestead, was from a check handed in by M'r's Davenport. There are a few other items of credit in the account with E. Kinney & Co. of which I have no recollection. All the deposits at the Fourth National Bank were made by me personally, either by coupons from her bonds, interest from M'r Simon, or call-loan checks to make her
170 account good on the books. She rarely, if ever, came to the bank with money to deposit. I have no recollection of any instance when she did so.

Q. Please state now, as nearly as you can, the items of credit resulting from the collection of coupons, giving dates and amounts in tabular form.

A. I have no means of telling from this account the credits that are made from the sale of coupons upon the bonds, but think the deposit-tickets will show. The following are the credits to the best of my recollection:

| | | | | |
|---|---|---|---|---|
| 1866. | March | 2. | 5-20 coupons | $203 08 |
| " | " | 17. | | 509 20 |
| " | July | 26. | | 358 00 |
| 1866. | Nov. | 8. | | 394 25 |
| 1867. | Jan'y | 30. | | 358 00 |
| " | June | 23. | | 237 25 |
| " | July | 16. | | 237 25 |
| 1868. | June | 23. | | 546 00 |

Q. State as nearly as you can from the accounts which of the credits result from the collection of interest from Simon.

A. As nearly as I can tell without reference to the deposit-
171 tickets, the following are the amounts of interest collected from Simon and credited to M'r's Davenport:

| | | |
|---|---|---|
| 1867. | March 30 | $300 00 |
| " | April 15 | 450 00 |
| " | October 2nd | 750 00 |
| 1868. | April 4 | 750 00 |
| " | Sept. 30 | 300 00 |
| " | Oct. 30 | 450 00 |
| 1869. | April 8 | 300 00 |
| " | Dec. 9 | 1,000 00 |
| 1871. | Nov. 1 | 1,000 00 |
| 1872. | Nov. 5 | 500 00 |
| | | $5,800 00 |

Q. If M'r's Davenport had at any time any other source of income than that already referred to, please to state what it was, and the amounts as nearly as you can.

A. She had no other, except rents from her Walnut Hills residence, during her absence in Europe, which were as follows:

| | | | | | |
|---|---|---|---|---|---|
| | 1871. | Aug. | 29. | Rent, J. F. Follett | $250 00 |
| | 1872. | Jan. | 13. | " " | 500 00 |
| | " | March | 14. | " " | 200 00 |
| 172 | 1872. | April | 6. | Rent, J. F. Follett | 146 25 |
| | " | May | | " " | 266 66 |
| | " | June | 1st. | " " | 137 09 |
| | | | | | $1,500 00 |
| | " | Nov. | 1st. | R. McCready | 1,000 00 |
| | | | | | $2,500 00 |

Q. What unusual expenses, if any, did M'r's Davenport have connected with the purchase of the Walnut Hills residence?

A. They consisted in repairs to the house, in grading the grounds, making new walks, and papering and painting the house; &, at the time when M'r McCready rented the house, the building of a barn. All the expenses, except the building of the barn, were made by M'r's Davenport shortly after she got possession of the property and before she went to Europe. I had the barn built during her absence, as I found it was impossible to rent the house without it.

Q. State as nearly as you can the amount that she expended
173 on the premises in repairs & improvements shortly after she purchased them.

A. I think about three thousand dollars.

Q. What income, if any, had Henry and Catharine, for their maintainanc' and education?

A. To the best of my knowledge no income whatever.

Q. When Henry went abroad in 1870 what is your recollection as to how his expenses were paid?

A. The money to pay his schooling and his outfit and passage to Europe was paid by M'r's Davenport by checks on the Fourth National Bank. I think his schooling was required to be paid one year in advance.

Q. State whether M'r's Davenport's accounts was or was not frequently overdrawn.

A. It was quite frequently overdrawn.

174 Q. How did she pay her current expenses for self and family?

A. Principally by checks on the bank, drawn against her account.

Q. Did you keep any account with her of receipts and disbursements, or render to her accounts of the same from time to time?

A. I kept no private account with her, preferring to have all her receipts & disbursements shown on the books of the bank, & in her account with the bank. The statements were made & rendered to her at any time when her pass-book was balanced, which could be done at any time she required it. I generally wrote in her pass-book before it was handed to her, in pencil, what her credits were for, and as to the debits she would know them by the checks.

Q. Have you in your possession any of her pass-books which she had with the bank?

175 A. No, I have not. The pass-books were handed to her when her account was balanced and her checks returned.

Q. Do you know whether she kept at home, independent of her pass-book, any account of credits and debits with the bank, as by memorandum on the margin of her check-book or otherwise?

A. She had check-books, but whether she kept memoranda of her checks given I can't state.

Q. State whether a notice would be sent to her of her account being overdrawn whenever such overdrafts occurred.

A. The notices of her overdrafts were given to me, as I transacted all her business, and I was expected to make her overdrafts good.

Q. Were the other officers of the bank willing that her account
176 should appear continuously, from day to day, overdrawn?

A. The officers objected to overdrawn accounts on the books of the bank, as they had to be reported as overdrafts in their public statements.

Q. The notices being sent to you, did you send them to her, and re-

quire her to come and make the account good; if not, how was it made good?

A. The notices were not sent to her, but were made good by me by making her call-loan checks, and placing them to the credit of her account.

Q. And if the account were then again overdrawn before any deposit was made, what would be done?

A. I would continue to make call-loan checks until a deposit was made that would meet them, or until funds were realized from the sale of some securities.

177 Q. When funds were so realized would they be put to her credit and then her check drawn against them to take up the call-loans; how does the bank account appear in that regard?

A. It does not appear to have been done; in all cases at least. I am sure it was not done towards the last of this account, but I never noticed or thought of that until I examined a transcript of the account within a day or two past, when my attention was called to it. I do not now see any checks which appear to have been given to take up any of these call-loans.

Q. Please to examine the account, on the credit side, and give as nearly as you can, without reference to the deposit-tickets, the credits which appear to be produced by call-loans.

A. In looking over the account I find the following amounts, which I think were call-loans, made for the purpose of keeping her ac-

178 count good, as I knew of no source of revenue from which those credits could have been derived, unless they were call-loans, and they are as follows:

| | | | |
|---|---|---|---|
| 1866. | Feb. | 7 | $500 00 |
| 1867. | " | 16 | 500 00 |
| " | M'rch | 5 | 2,000 00 |
| " | May | 2 | 400 00 |
| " | " | 23 | 100 00 |
| 1868. | Jan'y | 10 | 600 00 |
| " | May | 18 | 500 00 |
| " | June | 10 | 500 00 |
| " | Dec. | 31 | 500 00 |
| 1869. | Aug. | 2 | 1,500 00 |
| " | Oct. | 11 | 1,100 00 |
| 1870. | Apr'l | 5 | 500 00 |
| " | May | 9 | 600 00 |
| " | June | 1 | 500 00 |
| " | July | 25 | 1,500 00 |
| " | Oct. | 12 | 1,000 00 |
| " | Nov. | 30 | 1,500 00 |
| 1871. | Jan'y | 3 | 500 00 |
| " | " | 30 | 1,000 00 |
| | Carried over | | $15,300 00 |
| | Brought over | | 15,300 00 |
| 1871. | May | 15 | 500 00 |
| " | " | 29 | 500 00 |
| " | June | 15 | 1,200 00 |
| " | July | 18 | 964 33 |
| | Making a total of | | $18,464 33 |

179 As to some of these items I may be mistaken. I think I could tell better if I saw the deposit-tickets. As to all these items two facts concur which lead me to believe they were call-loans. These are, that a part of them were given to make her overdrafts good, and to provide funds for her to draw against; and that she had no income, so far as I know, from which such deposits could have been derived.

Q. State whether you did, or not, make all the overdrafts and call-loan checks good to the Fourth National Bank.

A. All overdrafts and call-loans were made good to the Fourth National Bank by me. I think her account there shows a very small balance in her favor.

Q. State whether you at any time said or wrote to your sister anything in regard to the amount she was spending, and the limited character of her resources.

180 A. I wrote to her once while she was in Europe, telling her that she was spending a great deal of money.

Q. State whether you made out a pass-book to be given to M'r's Davenport after her return from Europe, bringing down her account of receipts and disbursements to October, 1873, as you understood it.

A. The pass-book was made by me more as a statement of her account as I understood it, than as a pass-book in the proper sense, showing her receipts and disbursements during her absence in Europe, and including a few items incurred just as she was leaving.

Q. State whether the items charged to her in that account are actual payments or disbursements made by you.

A. Her actual disbursements, made by me for her account, and for which she received proper vouchers for with the book.

181 Q. State whether in that account, or in any other, so far as you now know, she is charged with the amounts paid by you to make good her call-loans at the Fourth National Bank.

A. All I can say in reply to that is, I cannot trace any amounts in her accounts large enough to cover the call-loan checks; and as to all the checks that are large enough, they appear to have been drawn for other and specific purposes.

Q. State, as nearly as you know, what monies she took with her to Europe when she left, and in what way her expenses were paid, or monies remitted to her while she was absent.

A. The only money I knew that she took with her to Europe was $50.00. Her expenses in Europe were paid by circular letters drawn from Duncan, Sherman & Company.

Q. What arrangements did you make with Duncan, Sherman & Co. in regard to furnishing her with circular letters when she left?

182 A. I expected to have to pay for the circular letters to the extent of five hundred pounds (£500), but found that by guaranteeing the payment to Duncan, Sherman & Co., and supposing that gold would decline, I made arrangements to have them paid at the Fourth National Bank in Cincinnati, where they were paid & charged in their account, and entered in her pass-book. These amounts were paid in the bank by me.

Q. What amount of government bonds, if any, were on hand, belonging to M'r's Davenport, in the summer of 1871, when she left for Europe?

A. Ten thousand dollars.

Q. State as nearly as you can what had become of the other $5,000 which she originally held.

A. On March 31st, 1866, $2,000 of bonds were sold for $2,047.40.

April 3rd, 1866, $2,000 were sold for $2,047.35, & July 9th, 1866, $1,000 were sold for $1,035. I make these statements from an examination of the account, and think I am correct.

183 Q. What do you know, if anything, as to an investment by M'r's Davenport in Western Union Telegraph stock before you had charge of her affairs?

A. I heard that she had bought some at 75, but when, what amount, or what became of it, I know nothing.

Q. After selling the certificate, standing in her name, May 1st, 1869, 390 shares, did she buy 400 other shares?

A. On May 1st, 1869, she sold 390 shares Western Union Telegraph stock, to wit: 90 shares at 43, and 300 at 43⅛; on June 10th, 1869, she bought 400 shares at 40.

Q. When were those 400 shares sold, and at what price?

A. They were sold June 7th, 1870, at 31½, making a loss, including commissions, of $3,600, not including interest.

Q. State whether any part of the proceeds of the certificate sold Feb. 23rd, 1871, in the name of Henry W. Davenport, went to the

184 credit of M'r's Davenport in her bank account.

A. I see by her statement that she was credited on that day with $3,000, which I think was a part of the proceeds of that sale.

Q. By whom were these various sales of bonds and stocks, as well as the purchase of the Western Union stock, made; that is, through what brokers?

A. The telegraph stock was bought and sold through S. B. Keyes & Co.

Q. Who attended to these purchases and sales for her?

A. The purchase and sale of bonds was done through me; of the stocks also.

Q. Do you know of her purchasing stocks at any other time than that referred to when the 400 shares were bought?

A. I have no knowledge of any.

185 Q. Did she instruct you at any time, other than that in reference to the 400 shares, to speculate in stocks on her account and with her means?

A. She did not; and I never did.

Q. State whether you were understood to be her agent and attorney in fact to transact her business in Cincinnati, and recognized as such by the bankers and brokers.

A. Although I had no written power of attorney, it was well understood by those who transacted business with her that I attended to all her business.

Q. State whether at any time you knew of her drawing a check for the purpose of making an investmnt of less sum than $1,000.

A. I don't know of any instance—I don't think she did.

Q. Did you ever know of her buying one or two $500 bonds at a time?

186 A. I don't remember of her doing it, but she may have done so. I think she bought the $15,000 bonds in sums of not less than $2,000 at one time, and at an interval of a few days.

Q. Did you know of her lending any money at any time?

A. I think on May 3rd, 1869, she loaned $10,000, and it was paid back July 2nd, 1869, with $166.66 interest, making $10,166.66.

Q. What funds does she appear to have had on hand at that time?

A. Funds derived from the sale of her 390 shares of telegraph stock, old May 1st, 1869.

Q. Who attended to that transaction for her, and to whom was the loan made; that is, the $10,000 loan above referred to?

A. I attended to it. The loan was made to Brashears, McLaughlin & Co.

187 Q. There were no loans, were there, of sums less than $1,000 that you know of?

A. No, sir.

Q. Look at the item of credit in her account, on June 7th, 1870, of $10,000, and state where that money came from.

A. The proceeds of the telegraph stock sold that day was $12,500, of which $10,000 was placed to her credit; the balance, amounting to $2,500, I am now unable to state what became of it.

Q. Have you had any settlement with M'r's Davenport of the accounts between you and her?

A. No, I have not had any.

Q. Can you state whether on a full settlement she would be indebted to you, or you to her?

A. I think I would be indebted to her.

188 Q. Is it not your impression now, or can you state any reason why her account with you should not be debited with about the amount of the call-loans which you paid for her at the bank in addition to the items with which it is now debited?

A. Her account should be debited with the amount, unless it has been already debited by her checks, but in that case her account should be credited with further amounts from sales of telegraph stock, in the names of Henry W. Davenport and Katharine J. Davenport, deducting $3,000 which is credited in account on February 27th, 1871, which was part of the proceeds of H. W. Davenport's stock.

Q. State as nearly as you can what were the average annual expenses of M'r's Davenport and the children, from 1865 to 1873, inclusive.

A. That will have to found out from an examination of her accounts. I cannot form an idea.

Q. What way could that be ascertained from the accounts, or approximated?

189 A. By taking her checks that were given for actual expenses, and footing them up.

R. W. RICKEY.

Examination taken, reduced to writing, and by the witness subscribed and sworn to before me this 23rd day of March, 1875, and the further examination adjourned to March 24th, 1875, at 10.30 a. m.

H. M. HAIGH,
*Commissioner, &c.*

MARCH 24TH, 1875.

Parties met pursuant to adjournment, and the witness, R. W. Rickey, was cross-examined by Henry L. Burnett, as follows:

Q. You refer in your examination-in-chief to a sale of 390 shares of Western Union Telegraph stock February 23rd, 1871, and of the same amount June 20th, 1871; they are marked in your answers as shares of H. W. D. and K. J. D.; to whom do these initials refer?

190 A. H. W. D. refers to Henry Wade Davenport, and K. J. D. to Katharine Josephine Davenport. They were the minor children of M'r's Euretta E. Davenport.

Q. What was Henry's age at the time to which you refer?

A. He was about seventeen years of age at that time; that is, he was between sixteen and seventeen.

Q. And what was Katharine's age at that time?

A. I think she was about two years younger.

Q. At the time of that sale where was Henry?

A. At school in Switzerland.

Q. And Katharine Davenport, where was she?

A. With her mother in the neighborhood of Cincinnati.

191 Q. Had these children any legal guardians, to your knowledge; and, if so, who were they?

A. Their mother was named guardian by the will.

Q. These shares, belonging to these children, were in how many certificates?

A. Two certificates, 390 shares each.

Q. Whose names appeared upon the face of those certificates as owners?

A. Henry Wade Davenport and Katharine Josephine Davenport.

Q. Were those shares of stock of the character that passed by delivery, or did they require to be endorsed by the owners when transferred?

A. They required to be endorsed by the owners.

Q. Were these two certificates, to which you have referred, owned by these children at the time of their father's death, or how did

192 they become possessed of them, if you know?

A. I have heard that those shares were left to them under the will of their father.

Q. Were these certificates in the ordinary and usual form of the certificates of the stock issued by the Western Union Telegraph Company?

A. They were the ordinary certificates, and were in the ordinary and usual form.

Q. At the time of the sale of these two certificates did you hold any power of attorney from these children, or power or authority of any kind from them, or either of them, from their guardian or the proper court, to transfer these certificates or to sign the names of these children to these certificates?

A. I never did.

193 Q. Did you, at the time of the transfer, sign or endorse the name of each one of these children on their respective certificates?

A. I did.

Q. Did any person act as witness to that signature; and, if so, whom?

A. My name is signed as witness.

Q. What was the name endorsed on each certificate? Give it as nearly as you can remember.

A. The name signed to the blank transfer of the certificate of Henry W. Davenport was "Henry Wade Davenport," and the name signed to the blank transfer of the certificate of Katharine J. Davenport was "Katharine Josephine Davenport."

Q. Where you at the time when you signed these names to the certificates—where was it done?

194 A. I was in Cincinnati, and they were signed at the Fourth National Bank.

Q. At the time that you signed the certificate belonging to Henry W. Davenport what did you then do with the certificate?

A. I handed it personally to S. B. Keyes and directed him to have it sold in New York at the market rate.

Q. To whom were the proceeds of that sale credited by Keyes, if you know?

A. The proceeds were paid to me by check payable to my order.

Q. At the time you endorsed the name of Katharine Davenport on her certificate, what did you then proceed to do with it?

A. I handed it to M'r Lea in the presence of M'r Keyes—they were standing together—with instructions to sell it in New York, which was done, and he accounted to me for the proceeds.

Q. On page blank you say, "all deposits at the Fourth National
195 Bank were made by me personally," &c.; do you not recollect the fact that some deposits were made in that bank, the Fourth National, to her credit during her absence in Europe?

A. I remember that two deposits were by General Burnett to her credit were on ⅚ of interest paid by G. Simon, & one of money received from J. J. Follett, and one or more deposits made to her credit by J. F. Follett on ⅚ of his rent.

Q. In the list which you have given on pages of call loans, amounting to $18,464.33, you don't mean to say, do you, that these sums were permitted to accumulate from February, 1866, to July 18th, 1871, without any payment being made, or credits entered to M'r's Davenport in the mean time?

A. No; they did not accumulate for that length of time, but they were often allowed to run until they amounted to five or six thousand dollars.

Q. How were they paid, and by whom?

196 A. These call loans were paid by M'r's Davenport, or by or through me from time to time, either by her depositing funds and then checking against them so as to lift these call-loans, or by paying and lifting them directly.

Q. You state in your examination-in-chief that you think $3,000 of the money received by you for the sale of the Henry W. Davenport certificate was deposited by you to the credit of M'r's Davenport; have you any distinct recollection about that matter now?

A. I have no recollection of making the deposit now, but think that I did, from the fact a deposit was made on the day upon which I received the proceeds of the sale of the stock.

Q. Can you now state positively whether any of the proceeds of Henry W. Davenport's certificate were made over to M'r's Davenport, or deposited to her credit?

A. I can't state it positively, but think part of it was placed to her credit.

197 Q. And that part that you think was placed to her credit was this $3,000, was it not—no other?

A. It was.

Q. None of the rest or remainder of the proceeds was ever paid over to her, or part to her credit, to your knowledge?

A. No; not to my knowledge.

Q. If it could be shown that this $3,000 had come from some other source, then none of the proceeds of this certificate, so far as you know, or now remember, would ever have been paid to M'r's Davenport?

A. I don't think that could be so.

Q. At the time M'r's Davenport started to Europe in the summer of 1871, you have said that she then had and owned $10,000 in government bonds; do you know what became of those bonds during her absence?

198 A. They were sold in various sums at various times and credited to her in my final statement furnished to her.

Q. M'r's Davenport was absent about a year and a half, was she not?

A. Yes; I think about twenty months.

Q. In that time she had to draw upon, as resources, the $11,000 realized from the sale of government bonds, the interest paid in by Simon on his note or judgment, and the rent of her Walnut Hills house, did she not?

A. She had.

Q. In addition to this, when she came home was there not a large amount due Duncan, Shearman & Co. for drafts or circular notes of theirs which had not been met?

A. There was about $2,500 due Duncan, Sherman & Co.

199 Q. Do you know whether that has ever been paid yet, or not?

A. I do not.

R. W. RICKEY.

Subscribed and sworn to before me this 20th day of March, 1875.

H. M. HAIGH,
*Notary Public.*

STATE OF NEW YORK,
*City & County of New York, ss:*

I, Henry M. Haigh, a notary public for the county of New York in said State, duly appointed, commissioned, qualified, and sworn, do hereby certify that the above-named Robert W. Rickey was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the above-entitled cause, and that the foregoing depositions by him subscribed were reduced to writing by me (except a few lines on page 29 and 30 which were written by the said witness), and
200 were subscribed by the said witness in my presence, and were commenced at the time and place in the notice specified, and continued by adjournment from day to day at the same place and between the same hours as in the notice specified. In testimony whereof I have hereunto set my hand and official seal this twenty-fourth day of March, A. D. 1875.

[SEAL.] H. M. HAIGH,
*Notary, City & County of New York.*

STATE OF NEW YORK,
*City and County of New York, ss:*

I, William Walsh, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, being a court of record, do hereby certify that H. M. Haigh, before whom the annexed deposition was taken, was at the time of taking the same a notary public of New York, dwelling in said city and county, duly appointed
201 and sworn and authorized to administer oaths to be used in any court in said State, and for general purposes; and that his signature thereto is genuine, as I verily believe.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county, the 31st day of March, 1875.

[SEAL.] W'M WALSH, *Clerk.*

Fees $50.00, paid by defendants.

202 EXHIBIT K. (Should be on page 147.)

*Fourth National Bank in account with Eurretta E. Davenport, Cr.*

1871. DR.

| | | | |
|---|---|---|---|
| July | 5. | 5-20 bonds & pren. | 11,000 00 |
| Nov. | 1. | Simon's int. | 1,000 00 |
| Aug. | 29. | Rent, J. F. Follett | 250 00 |
| 1872. | | | |
| Jan. | 13. | Rent, J. F. Follett | 500 00 |
| Mrch. | 14. | " do | 200 00 |
| April | 6. | " do | 146 25 |
| May | " | " do | 266 66 |
| June | 1. | " do | 137 09 |
| Nov. | 5. | Simon's int | 500 00 |
| " | " | Macready's rent | 1,000 00 |
| | | Forward | 15,000 00 |

1871. CR.

| | | | |
|---|---|---|---|
| May | 29. | Overdraft | 638 97 |
| " | 25. | | 19 25 |
| " | 30. | | 25 00 |
| " | 31. | | 17 00 |
| June | 1. | | 785 35 |
| " | 2. | | 81 10 |
| " | 3. | | 9 97 |
| " | 6. | | 212 50 |
| " | 8. | | 46 90 |
| " | 13. | | 21 00 |
| " | 14. | | 100 00 |
| " | 15. | | 20 00 |
| " | 16. | | 120 99 |
| " | 17. | | 86 25 |
| " | | 19. | 530 15 |
| 203 | " | 20. | 196 40 |
| " | | 26. | 100 00 |
| July | | 1. Board bill | 64 30 |
| " | " | Gold for expenses, 50.31<br>Carriage to steamer, 5.00 | 55 31 |
| | | Forward. | |
| 1871. | | Bro't over | 8,881 44 |
| Aug. | | 1. Circular letter | 280 65 |
| " | | 10. | 280 24 |
| " | | 18. | 616 91 |
| Oct. | | 3. | 511 49 |
| Nov. | | 20. | 441 70 |
| Decr. | | 18. | 438 83 |
| Dec. | | 30. | 108 06 |
| 1872. | | | |
| Jan. | | 6. | 109 19 |
| " | | 12. Tax on house | 102 43 |
| " | | 17. | 217 34 |
| " | | 23. | 109 82 |
| March | | 26. Tax on furniture | 41 56 |

| | | | |
|---|---|---|---|
| April | 5. | | 219 33 |
| " | 11. | | 109 93 |
| | May 6. | | 619 39 |
| 204 | May 16 | | 227 96 |
| | " 24 | | 285 09 |
| | Forward | | 13,601 36 |
| | Bro't over | | 13,601 36 |
| June | 1 | | 113 94 |
| " | 12 | | 286 62 |
| " | 24 | | 572 05 |
| July | 18 | | 284 71 |
| " | 22 | | 285 99 |
| " | 31 | | 1,775 03 |
| " | " | | 14 25 |
| Sept. | 18 | | 905 83 |
| | " | | 111 54 |
| | 25 | | 112 49 |
| Oct. | 30 | | 112 40 |
| Nov. | 20 | | 222 96 |
| Jan. | 20. Tax on house | | 189 91 |
| July | 1. Building stable | | 1,027 50 |
| " | " Laying gas and water pipe to S | | 150 00 |
| Aug. | 14. Duncan, S. & Co | | 341 65 |
| " | 21. | | 113 48 |
| | Forward | | 20,221 71 |
| | Bro't over | | 20,221 71 |
| Sept. | 14. Duncan, S. & Co | | 336 76 |
| Oct. | 1. " | | 1,017 32 |
| | Int. on past due note held by B. F. Stone | | 399 99 |
| | Paid to Barrett | | 571 50 |
| | | | 22,547 28 |
| | Balance short | | 7,547 28 |
| 205 | D'r bro't over | | 15,000 00 |
| | Balance | | 7,547 28 |
| | | | 22,547 28 |
| Deposited by and due to A. W. Rickey | | | 7,547 28 |

206 *Exhibit A.—H. M. Haigh, Comm'r.*

NEW YORK, *March* 23, 1874.

M'R'S E. E. DAVENPORT.

| 1866. | | | | |
|---|---|---|---|---|
| Feb. | 7 | | 500 | 500 |
| " | | 50 | | 450 |
| | 10 | 20 | | 430 |
| | 19 | 26 50 | | 403 50 |
| | 28 | 241 | | 162 50 |
| March | 2 | | 203 08 | 365 58 |
| | 3 | 66 02 | | 299 56 |
| | 6 | 30 75 | | 268 81 |
| | 10 | 130 | | 138 81 |
| | 17 | | 509 20 | 648 01 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| March | 17 | | 290 | | 358 01 |
| | 20 | | 51 | | 307 01 |
| | 24 | | 20 | | 287 01 |
| | 28 | | | 1,330 03 | 1,617 04 |
| | " | | 500 | | 1,117 04 |
| | 29 | | | 511 65 | 1,628 69 |
| | 30 | | 100 | | 1,528 69 |
| | 31 | | | 2,047 40 | 3,576 09 |
| | | Balance | 3,576 09 | | |
| | | | 5,101 36 | 5,101 36 | |
| April | 2 | Balance | | 3,576 09 | 3,576 09 |
| | 3 | | | 2,047 35 | 5,623 44 |
| | 5 | | 25 | | 5,598 44 |
| | 9 | | 36 | | 5,562 44 |
| | 12 | | 18 70 | | 5,543 74 |
| | 16 | | 50 | | 5,493 74 |
| | 25 | | 25 | | 5,468 74 |
| | 27 | | 46 | | 5,422 74 |
| | 28 | | 232 | | 5,190 74 |
| May | 1 | | 40 | | 5,150 74 |
| | 2 | | 56 | | 5,094 74 |
| | | 14 | 4,504 50 | | 590 24 |
| 207 | May | 16 | 26 | | 564 24 |
| | | 25 | 50 | | 514 24 |
| | 26 | | 52 75 | | 461 49 |
| | 28 | | 25 | | 436 49 |
| | 31 | | 36 | | 400 49 |
| June | 6 | | 93 60 | | 306 89 |
| | 7 | | 244 | | 62 89 |
| | 8 | | 72 60 | | 9 71 |
| | 13 | | 44 | | 53 71 |
| | 15 | | 23 | | 76 71 |
| | 16 | | | 273 75 | 197 04 |
| | 18 | | 71 38 | | 125 66 |
| | 22 | | 146 13 | | 20 47 |
| | 27 | | 125 68 | | 146 15 |
| | 30 | | 63 | | 209 15 |
| July | 2 | | 105 | | 314 15 |
| | 3 | | 177 95 | | 492 15 |
| | 5 | | 47 25 | | 539 35 |
| | 7 | | 21 | | 560 35 |
| | | Balance | | 560 35 | |
| | | | 6,457 54 | 6,457 54 | |
| July | 9 | Balance | 560 35 | | 560 35 |
| | " | | | 1,035 | 474 65 |
| | " | | 428 50 | | 46 15 |
| | 11 | | 220 78 | | 174 63 |
| | 12 | | 20 75 | | 195 38 |
| | 26 | | | 358 | 162 62 |
| Aug. | 9 | | | 600 | 762 62 |
| | 15 | | | 400 | 1,162 62 |
| Sept. | 6 | | 500 | | 662 62 |
| | 12 | Glenn | | 15,907 50 | 16,570 12 |
| | | 24 | 101 41 | | 16,468 71 |
| 208 | Sept. | 26 | 26 | | 16,442 71 |
| | | 27 | 15,520 | | 922 71 |
| | 29 | | 32 50 | | 890 21 |
| Oct. | 4 | | 247 90 | | 642 31 |
| | 8 | | 25 | | 617 31 |
| | 10 | | 5 90 | | 611 41 |
| | 17 | | 100 | | 511 41 |
| | 24 | | 55 13 | | 456 28 |

*Exhibit A.—H. M. Haigh. Comm'r*—Continued.

| | | | | | | |
|---|---|---|---|---|---|---|
| | | 27 | | 25 | | 431 28 |
| | Nov. | 1 | | 36 | | 395 28 |
| | | 2 | | 240 70 | | 154 58 |
| | | 3 | | 12 80 | | 141 78 |
| | | 8 | | | 394 25 | 536 03 |
| | | 13 | | 89 10 | | 446 93 |
| | | 27 | | 20 | | 426 93 |
| | Dec. | 1 | | 30 | | 396 93 |
| | | 3 | | 253 45 | | 143 48 |
| | | 10 | | 8 75 | | 134 73 |
| | | | Balance | 134 73 | | |
| | | | | 18,694 75 | 18,694 75 | |
| | Dec. | 11 | Balance | | 134 73 | 134 73 |
| | | 19 | | 25 | | 109 73 |
| | | 22 | | 25 | | 84 73 |
| | | 28 | | 25 | | 59 73 |
| | | 29 | | 202 | | 142 27 |
| | | 31 | | 200 | | 342 27 |
| | 1867. | | | | | |
| | Jan'y | 7 | | 71 | | 413 27 |
| | | 8 | | 74 57 | | 487 84 |
| | | " | | 2 | | 489 84 |
| | | 10 | | | 7,098 | 6,608 16 |
| | | " | | 7,075 75 | | 467 59 |
| | | | 11 | 14 45 | | 482 04 |
| 209 | | Jan. | 15 | 8 50 | | 490 54 |
| | | | 17 | 13 | | 503 54 |
| | | 18 | | 15 | | 518 54 |
| | | 19 | | 132 50 | | 651 04 |
| | | 25 | | 69 45 | | 720 49 |
| | | 26 | | 200 | | 920 49 |
| | | 30 | | | 358 | 562 49 |
| | | " | | 36 25 | | 598 74 |
| | Feb. | 6 | | 50 | | 648 74 |
| | | 12 | | | 237 25 | 411 49 |
| | | 13 | | 38 70 | | 450 19 |
| | | | Balance | | 450 19 | |
| | | | | 8,278 17 | 8,278 17 | |
| | Feb. | 16 | Balance | 450 19 | | 450 19 |
| | | " | | | 500 | 49 81 |
| | | 25 | | 210 50 | | 160 69 |
| | Mar. | 5 | | | 2,000 | 1,839 31 |
| | | " | | 1,000 | | 839 31 |
| | | 6 | | 27 | | 812 31 |
| | | 15 | | 274 24 | | 538 07 |
| | | 16 | | 26 55 | | 511 52 |
| | | 20 | | 21 50 | | 490 02 |
| | | 21 | | 700 | | 209 98 |
| | | 30 | Simon | | 300 | 90 02 |
| | April | 15 | | | 450 | 540 02 |
| | | " | | 500 | | 40 02 |
| | | 22 | | 205 05 | | 165 03 |
| | | 25 | | 200 | | 365 03 |
| | May | 2 | | | 400 | 34 97 |
| | | 8 | | 26 | | 8 97 |
| | | 13 | | 25 | | 16 03 |
| | | | 14 | | 163 59 | 147 56 |
| 210 | | May | 17 | 200 | | 52 44 |
| | | | 23 | Call loan | 100 | 47 56 |
| | | 27 | | 29 15 | | 18 41 |
| | | 30 | | 10 | | 8 41 |
| | June | 18 | | 55 | | 46 59 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| June | 18 | | | | |
| | 22 | | | 237 25 | 190 66 |
| | " | | 221 75 | | 31 09 |
| July | 1 | | 160 32 | | 191 41 |
| | " | | 28 75 | | 220 16 |
| | 12 | | 34 50 | | 254 66 |
| | 16 | | | 237 25 | 17 41 |
| | 18 | | 50 | | 67 41 |
| | 22 | | 15 | | 82 41 |
| | 23 | | 282 45 | | 364 86 |
| | 24 | | 195 12 | | 559 98 |
| | 25 | | 8 95 | | 568 93 |
| | 26 | | 35 | | 603 93 |
| | 31 | New York | | 2,698 | 2,094 07 |
| | " | | 765 10 | | 1,328 97 |
| Aug. | 1 | | 7 | | 1,321 97 |
| | | Balance | 1,321 97 | | |
| | | | 7,086 09 | 7,086 00 | |
| Aug. | 5 | Balance | | 1,321 97 | 1,321 97 |
| | " | | 300 | | 1,021 97 |
| | 14 | | 75 89 | | 946 08 |
| | 15 | | 13 30 | | 932 78 |
| | 23 | | 188 | | 744 78 |
| | 28 | | 26 | | 718 78 |
| | 31 | | 15 | | 703 78 |
| Sept. | 6 | | 15 | | 688 78 |
| | 7 | | 129 19 | | 559 59 |
| | 13 | | 25 | | 534 59 |
| 211 | Sept. | 14 | 50 77 | | 483 82 |
| | 21 | | 35 | | 448 82 |
| | 23 | | 24 50 | | 424 32 |
| | 25 | | 174 12 | | 250 20 |
| | 26 | | 56 15 | | 194 05 |
| | 28 | | 25 | | 169 05 |
| Oct. | 1 | | 12 50 | | 156 55 |
| | | Balance | 156 55 | | |
| | | | 1,321 97 | 1,321 97 | |
| Oct. | 2 | Balance | | 156 55 | 156 55 |
| | " | | | 750 | 906 55 |
| | 3 | | 53 50 | | 853 05 |
| | 7 | | 97 48 | | 755 57 |
| | 10 | | 25 | | 730 57 |
| | 12 | | 18 | | 712 57 |
| | 22 | | 204 | | 508 57 |
| | 30 | | 22 86 | | 485 71 |
| Nov. | 1 | | 3 25 | | 482 47 |
| | 4 | | 26 | | 456 46 |
| | 5 | | 100 | | 356 47 |
| | 6 | | 6 50 | | 349 96 |
| | 9 | | 12 | | 337 96 |
| | " | | 54 | | 283 96 |
| | 13 | | 18 30 | | 265 66 |
| | 23 | | 203 | | 62 66 |
| | 25 | | 16 15 | | 46 51 |
| Dec. | 2 | | 37 | | 9 51 |
| | 7 | | 12 85 | | 3 34 |
| | 9 | | 137 10 | | 140 44 |
| | 13 | | 12 | | 152 44 |
| | 20 | | 48 07 | | 200 51 |
| | 23 | | 25 00 | | 225 51 |
| 212 | Dec. | 26 | 324 60 | | 550 11 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| | 1868. | | | | |
| Jan. | 10 | | 25 | | 575 11 |
| | 16 | | | 600 | 24 89 |
| | 17 | | | 474 50 | 499 39 |
| | " | | 50 | | 449 39 |
| | 23 | | 197 25 | | 252 14 |
| | 24 | | 395 80 | | 143 66 |
| | 29 | | 24 50 | | 168 16 |
| | 30 | | 18 80 | | 186 96 |
| Feb. | 4 | N. Y. | | 3,673 88 | 3,486 92 |
| | " | | 1,100 | | 2,386 92 |
| | 8 | | 8 | | 2,378 92 |
| | 11 | | 1,318 04 | | 1,060 88 |
| | 13 | | 33 60 | | 1,027 28 |
| | 15 | | 50 | | 977 28 |
| | 22 | | 97 80 | | 879 48 |
| | 24 | | 221 | | 658 48 |
| | 29 | | 119 97 | | 538 51 |
| Mar. | 3 | | 77 50 | | 461 01 |
| | 4 | | 66 65 | | 394 36 |
| | 13 | | | 1,300 | 1,694 36 |
| | " | | 10 | | 1,684 36 |
| | | Balance | 1,684 36 | | |
| | | | 6,954 93 | 6,954 93 | |
| Mar. | 14 | Balance | | 1,684 36 | 1,684 36 |
| | " | | 1,300 | | 384 36 |
| | 16 | | 16 50 | | 367 86 |
| | 18 | | 15 | | 352 86 |
| | 19 | | 38 83 | | 314 03 |
| | 21 | | 31 83 | | 282 20 |
| | 23 | | 247 50 | | 34 70 |
| | 26 | | 187 | | 152 30 |
| 213 Mar. | 28 | | 233 20 | | 385 50 |
| | 31 | | 25 | | 410 50 |
| April | 1 | | 42 03 | | 452 53 |
| | 2 | | 25 | | 477 53 |
| | 4 | | 7 60 | | 485 13 |
| | 6 | | | 7 50 | 264 87 |
| | 7 | | 10 | | 254 87 |
| | 9 | | 9 | | 245 87 |
| | 10 | | 47 50 | | 198 37 |
| | 11 | | 52 30 | | 146 07 |
| | 13 | | 12 | | 134 07 |
| | 16 | | 24 50 | | 109 57 |
| | 17 | | 25 | | 84 57 |
| | 21 | | 185 | | 100 43 |
| | 23 | | 28 98 | | 129 41 |
| | 24 | | 20 | | 149 41 |
| May | 5 | | 66 | | 215 41 |
| | 7 | | 5 | | 220 41 |
| | 8 | | 71 08 | | 291 49 |
| | 13 | | 26 | | 317 49 |
| | 14 | | 10 | | 327 49 |
| | 18 | | 5 | | 332 49 |
| | 22 | | | 500 | 167 51 |
| | 25 | | 5 25 | | 162 26 |
| | 26 | | 17 20 | | 144 76 |
| | 28 | | 10 | | 134 76 |
| June | 4 | | 410 45 | | 275 69 |
| | 8 | | 5 45 | | 281 14 |
| | 9 | | 2 35 | | 283 49 |
| | 10 | | | 500 | 216 51 |
| | " | | 21 | | 195 51 |
| | 11 | | 131 97 | | 63 54 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| 214 | June | 13 | 47 65 | | 15 89 |
| | | 15 | 18 00 | | 2 11 |
| | | 18 | 33 50 | | 35 61 |
| | | 19 | 16 | | 51 61 |
| | | 20 | 202 76 | | 254 36 |
| | | 23 | 40 | | 294 36 |
| | | 30 | | 546 | 251 64 |
| | July | 15 | 250 | | 1 64 |
| | | 18 | | 2,498 | 2,499 64 |
| | | 21 | 20 | | 479 64 |
| | Aug. | 10 | | 300 | 779 64 |
| | | " | 336 65 | | 442 99 |
| | | 15 | 500 | | 942 99 |
| | | 17 | 100 | | 842 99 |
| | | 29 | 5 | | 837 99 |
| | Sept. | 5 | 10 | | 827 99 |
| | | 8 | 1,000 | | 827 99 |
| | | 12 | 2 | | 825 99 |
| | | 25 | 406 99 | | 419 |
| | | 30 | | 300 | 719 |
| | | " | 11 05 | | 707 95 |
| | Oct. | 1 | 41 | | 666 95 |
| | | 3 | 199 83 | | 467 12 |
| | | Balance | 467 12 | | |
| | | | 7,078 36 | 7,078 36 | |
| | Oct. | 9 Balance | | 467 12 | 467 12 |
| | | 13 | 15 | | 452 12 |
| | | 17 | 34 50 | | 417 62 |
| | | 21 | 30 10 | | 387 62 |
| | | 22 | 10 | | 377 62 |
| | | 26 | 12 | | 365 62 |
| | | 27 | 5 | | 360 62 |
| 215 | Oct. | 30 | | 450 | 810 62 |
| | Nov. | 2 | | 2,762 50 | 3,573 12 |
| | | 1 | 5 | | 3,568 12 |
| | | 5 | 25 | | 3,543 12 |
| | | 12 | 3,000 | | 543 12 |
| | | 14 | | 1,600 | 2,143 12 |
| | | " | 3,021 55 | | 878 43 |
| | | 16 | | 2,700 | 1,821 57 |
| | | " | 45 | | 1,776 57 |
| | | 19 | 186 92 | | 1,589 65 |
| | | 21 | 20 | | 1,569 65 |
| | | 27 | 212 50 | | 1,357 15 |
| | | 28 | 390 40 | | 966 75 |
| | | 30 | 12 | | 954 75 |
| | Dec. | 3 | 28 30 | | 926 45 |
| | | 5 | 378 | | 548 45 |
| | | 7 | 5 | | 543 45 |
| | | 8 | 8 95 | | 534 50 |
| | | 9 | 419 51 | | 114 99 |
| | | 11 | 25 | | 89 99 |
| | | 16 | 38 | | 51 99 |
| | | 24 | 79 | | 27 01 |
| | | 26 | 25 | | 52 01 |
| | | 31 | | 500 | 447 99 |
| | 1869. | | | | |
| | Jan'y | 2 | 10 50 | | 437 49 |
| | | 4 | 72 01 | | 365 48 |
| | | 5 | 14 | | 351 48 |
| | | 6 | 28 95 | | 322 53 |
| | | 13 | 60 97 | | 261 56 |
| | | 14 | 275 | | 13 44 |
| | | 16 | | 405 | 391 56 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| | | 16 | 718 65 | | 327 09 |
| 216 | Jan. | 20 | | 2,348 | 2,020 91 |
| | | 27 | 25 | | 1,995 91 |
| | | 29 | 120 51 | | 1,875 40 |
| | Feb. | 2 | 225 | | 1,650 40 |
| | | 10 | 20 | | 1,630 40 |
| | | 13 | 93 | | 1,537 40 |
| | | 16 | 6 | | 1,331 40 |
| | | 20 | 12 | | 1,519 40 |
| | | 22 | 115 50 | | 1,409 90 |
| | | 26 | 25 | | 1,378 90 |
| | | 27 | 13 | | 1,365 90 |
| | Mar. | 2 | 16 | | 1,349 90 |
| | | 8 | 36 | | 1,313 90 |
| | | 12 | 66 85 | | 1,247 05 |
| | | 16 | 52 80 | | 1,194 25 |
| | | " | 443 90 | | 750 35 |
| | | 17 | 279 32 | | 471 03 |
| | | 19 | 110 90 | | 360 13 |
| | | 23 | 25 | | 335 13 |
| | | 25 | 285 14 | | 49 99 |
| | | 29 | 8 30 | | 41 69 |
| | | 31 | 10 | | 31 69 |
| | April | 3 | 29 75 | | 1 94 |
| | | 6 | 25 | | 23 06 |
| | | 8 Simon | | 300 | 276 94 |
| | | 12 | 10 | | 266 94 |
| | | 19 | 85 12 | | 181 82 |
| | | 20 | 52 60 | | 129 32 |
| | | 22 | 118 12 | | 11 20 |
| | | 24 | 65 50 | | 54 30 |
| | | 26 | 10 | | 64 30 |
| | | 27 | 27 75 | | 92 05 |
| 217 | April | 28 | 10 | | 102 05 |
| | | 29 | 77 03 | | 179 08 |
| | May | 1 | | 16,729 05 | 16,549 97 |
| | | 3 | 10,000 | | 6,549 97 |
| | | 4 | 50 | | 6,499 97 |
| | | 10 | 39 50 | | 6,460 47 |
| | | 11 | 53 40 | | 6,407 07 |
| | | 18 | 25 | | 6,382 07 |
| | | 20 | 65 | | 6,317 07 |
| | | 21 | 80 52 | | 6,236 55 |
| | | 22 | 218 72 | | 6,017 83 |
| | | 26 | 313 50 | | 5,704 33 |
| | | 29 | 32 50 | | 5,671 83 |
| | | 31 | 688 | | 4,983 83 |
| | June | 4 | 25 | | 4,958 83 |
| | | 7 | 20 65 | | 4,938 18 |
| | | 8 | 77 25 | | 4,860 93 |
| | | 10 | 4,050 | | 810 93 |
| | | 11 | 457 19 | | 353 74 |
| | | 12 | 21 50 | | 322 24 |
| | | 14 | 12 65 | | 319 59 |
| | | 15 | 200 | | 119 59 |
| | | 19 | 52 | | 67 59 |
| | | 22 | 25 | | 42 59 |
| | | 26 | 206 22 | | 163 63 |
| | | 30 | 15 | | 178 63 |
| | July | 1 | 161 23 | | 339 86 |
| | | 2 | | 10,166 66 | 9,826 80 |
| | | " | 12,179 04 | | 2,352 24 |
| | | Balance | | 2,352 24 | |
| | | | 40,780 57 | 40,780 57 | |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | | |
|---|---|---|---|---|---|---|
| 218 | July | 3 | Balance | 2,352 24 | | 2,352 24 |
| | | 9 | | 967 50 | | 3,319 74 |
| | | 13 | | 74 53 | | 3,394 27 |
| | | 17 | | 149 62 | | 3,543 89 |
| | | 19 | | 25 | | 3,568 89 |
| | | 20 | | | 1,568 | 2,000 89 |
| | | " | | 33 80 | | 2,034 69 |
| | | 21 | | | 800 | 1,234 69 |
| | | " | | 22 | | 1,256 69 |
| | | 22 | | 55 | | 1,311 69 |
| | | 23 | | 100 | | 1,411 69 |
| | Aug. | 2 | Call loan | | 1,500 | 88 31 |
| | | 25 | | 13 | | 75 31 |
| | Sept. | 6 | | 250 | | 174 69 |
| | | 11 | | 161 | | 335 69 |
| | | 16 | | 36 25 | | 371 94 |
| | Oct. | 6 | | 182 16 | | 554 10 |
| | | " | | 37 65 | | 591 75 |
| | | 8 | | 351 56 | | 943 31 |
| | | 9 | | 37 27 | | 980 58 |
| | | 11 | Call | | 1,100 | 119 42 |
| | | 12 | | 25 | | 94 42 |
| | | 14 | | 49 50 | | 44 92 |
| | | 18 | | 25 | | 19 72 |
| | | 25 | | 12 07 | | 7 85 |
| | | 28 | | 18 | | 10 15 |
| | | 29 | | 12 80 | | 22 95 |
| | Nov. | 1 | | 25 | | 47 95 |
| | | 2 | | 36 25 | | 84 20 |
| | | 5 | | 30 67 | | 114 87 |
| | | 8 | | 33 60 | | 148 47 |
| | | 9 | | 35 13 | | 183 60 |
| 219 | Dec. | 4 | | 60 40 | | 244 |
| | | " | | 19 25 | | 263 25 |
| | | 9 | Int. Simon | | 1,000 | 736 75 |
| | | " | | 500 | | 236 75 |
| | | 13 | | 73 25 | | 163 50 |
| | | 18 | | 19 85 | | 143 65 |
| | | 20 | | 28 | | 115 65 |
| | | 22 | | 6 | | 109 65 |
| | | 23 | | 89 95 | | 19 70 |
| | | 31 | | 26 | | 6 30 |
| | 1870. | | | | | |
| | Jan. | 5 | | 20 | | 26 30 |
| | | 6 | | 14 | | 40 30 |
| | | 8 | | 25 | | 65 30 |
| | | 15 | | 20 50 | | 85 80 |
| | | 17 | | | 2,368 | 2,282 20 |
| | | " | | 30 75 | | 2,251 45 |
| | | 18 | | 53 60 | | 2,197 85 |
| | | 20 | | 53 66 | | 2,144 19 |
| | | 22 | | 25 | | 2,119 19 |
| | | 24 | | 300 | | 1,819 19 |
| | | 25 | | 20 | | 1,799 19 |
| | | 26 | | 759 20 | | 1,039 99 |
| | | 27 | | 12 | | 1,027 99 |
| | Feb. | 1 | | 262 72 | | 765 27 |
| | | 2 | | 52 | | 713 27 |
| | | 3 | | 200 | | 513 27 |
| | | 4 | | 5 45 | | 507 82 |
| | | 5 | | 215 | | 292 82 |
| | | 7 | | 94 66 | | 198 16 |
| | | 8 | | 85 | | 113 16 |
| | | 9 | | 50 | | 63 16 |
| | | 11 | | 52 80 | | 10 36 |
| 220 | Feb. | 21 | | 5 | | 5 36 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | |
|---|---|---|---|---|---|
| | Feb. | 25 | 138 | | 132 64 |
| | | 26 | 78 85 | | 211 49 |
| | | 28 | 3 10 | | 214 59 |
| Mar. | | 3 | 45 | | 259 59 |
| | | 8 | 54 | | 313 59 |
| | | 9 | 12 05 | | 325 64 |
| | | 14 | 17 75 | | 343 39 |
| | | 15 | 23 94 | | 367 33 |
| | | 18 | 145 50 | | 512 83 |
| | | 30 | 41 88 | | 554 71 |
| April | | 4 | 75 | | 629 71 |
| | | 5 | | 500 | 129 71 |
| | | 7 | 45 | | 174 71 |
| | | 12 | 20 | | 194 71 |
| | | 13 | 13 70 | | 208 41 |
| | | 27 | 4 | | 212 41 |
| | | 30 | 45 50 | | 257 91 |
| May | | 2 | 25 | | 282 91 |
| | | 3 | 126 85 | | 409 76 |
| | | 6 | 200 | | 609 76 |
| | | 7 | 112 88 | | 722 64 |
| | | 9 Call loan | | 600 | 122 64 |
| | | " | 99 | | 221 64 |
| | | 12 | 69 40 | | 291 04 |
| | | " | 25 | | 316 04 |
| | | 14 | 24 25 | | 340 29 |
| | | 16 | 59 33 | | 399 62 |
| | | 17 | 116 70 | | 516 32 |
| | | 18 | 300 | | 816 32 |
| | | 20 | 250 | | 1,066 32 |
| | | 21 | 22 25 | | 1,088 57 |
| 221 | May | 25 | 214 60 | | 1,303 17 |
| | | 27 | 7 | | 1,310 17 |
| | | 28 | 9 50 | | 1,319 67 |
| | | 30 | 25 | | 1,344 67 |
| | | 31 | 50 | | 1,394 67 |
| June | | 1 | | 500 | 894 67 |
| | | 3 | 50 | | 944 67 |
| | | 4 | 46 85 | | 991 52 |
| | | 7 | | 10,000 | 9,008 48 |
| | | " | 60 | | 8,948 48 |
| | | " | 6 | | 8,942 48 |
| | | " | 5,906 60 | | 3,035 88 |
| | | 9 | 20 | | 3,015 88 |
| | | 10 | 100 | | 2,915 88 |
| | | 18 | 218 99 | | 2,696 89 |
| | | 21 | 129 23 | | 2,567 66 |
| | | 25 | 13 75 | | 2,553 91 |
| | | 30 | 6 75 | | 2,547 16 |
| July | | 1 | 150 | | 2,397 16 |
| | | 2 | 25 | | 2,372 16 |
| | | 5 | 41 50 | | 2,330 66 |
| | | 6 | 278 25 | | 2,052 41 |
| | | 8 | 102 45 | | 1,949 96 |
| | | 9 | 203 15 | | 1,746 81 |
| | | 11 | 12 18 | | 1,734 63 |
| | | 14 | 2,000 | | 265 37 |
| | | 18 | 189 87 | | 455 24 |
| | | 19 | 105 | | 560 24 |
| | | 20 | 119 75 | | 679 99 |
| | | 21 | 510 93 | | 1,190 92 |
| | | 25 | 222 10 | | 1,413 02 |
| | | " | 10 | | 1,423 02 |
| 222 | Aug. | 1 | | 1,500 | 76 98 |
| | Sept. | 2 | | 291 66 | 368 64 |
| | | " | 116 51 | | 252 13 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | | | |
|---|---|---|---|---|---|---|
| Sept. | 21 | | 11 | | | 241 13 |
| | 22 | | 629 40 | | | 388 27 |
| | 30 | | 19 15 | | | 407 42 |
| Oct. | 3 | | | 291 66 | | 115 76 |
| | " | | 20 | | | 135 76 |
| | 4 | | 170 07 | | | 305 83 |
| | " | | 227 30 | | | 533 13 |
| | 6 | | 18 | | | 551 13 |
| | 8 | | 149 91 | | | 701 04 |
| | 10 | | 214 86 | | | 915 90 |
| | 12 | | 97 65 | | | 1,013 55 |
| | 17 | | | 1,000 | | 13 55 |
| | 22 | | 26 72 | | | 40 27 |
| | 25 | | 73 | | | 113 27 |
| | 26 | | 8 | | | 121 27 |
| | 27 | | 39 35 | | | 160 62 |
| | 29 | | 345 | | | 505 62 |
| | 31 | | 100 | | | 605 62 |
| Nov. | 1 | | | 250 | | 355 62 |
| | 2 | | 373 33 | | | 728 95 |
| | 3 | | 118 07 | | | 847 02 |
| | 9 | | 12 85 | | | 859 87 |
| | 11 | | 30 | | | 889 87 |
| | 15 | | 12 | | | 901 87 |
| | 17 | | 25 | | | 926 87 |
| | 18 | | 196 56 | | | 1,123 43 |
| | 19 | | 20 70 | | | 1,444 13 |
| | 25 | | 11 | | | 1,155 13 |
| | 28 | | 33 63 | | | 1,188 76 |
| 223 | Nov. 30 | | | 1,500 | | 311 24 |
| | " | | 81 44 | | | 229 80 |
| Dec. | 5 | | 91 43 | | | 138 37 |
| | 7 | | 2 | | | 136 37 |
| | 17 | | 248 15 | | | 111 88 |
| | 19 | | 11 50 | | | 123 38 |
| | 24 | | 105 81 | | | 229 19 |
| | 25 | | 17 67 | | | 246 86 |
| | 29 | | 69 13 | | | 315 99 |
| 1871. | | | | | | |
| Jan. | 3 | | 49 25 | | | 365 24 |
| | " | | 75 | | | 440 24 |
| | 5 | | | 500 | | 59 76 |
| | " | | 165 13 | | | 105 37 |
| | " | | 55 | | | 160 37 |
| | 7 | | 45 75 | | | 206 12 |
| | 9 | | | 240 | | 33 88 |
| | 10 | | 11 30 | | | 22 58 |
| | 13 | | 150 | | | 127 42 |
| | 20 | | 18 35 | | | 145 77 |
| | 23 | | 164 22 | | | 309 99 |
| | 24 | | 500 | | | 809 99 |
| | 25 | | 119 43 | | | 929 42 |
| | 26 | | 27 | | | 956 42 |
| | 27 | | 66 90 | | | 1,023 32 |
| | 30 | | | 1,000 | | 23 32 |
| | " | | 201 51 | | | 224 83 |
| | 31 | | 5 | | | 229 83 |
| Feb. | 3 | | 56 25 | | | 286 08 |
| | 4 | | 37 | | | 323 08 |
| | 6 | | 69 66 | | | 392 74 |
| | 10 | | 149 44 | | | 542 18 |
| | 17 | | 45 34 | | | 587 52 |
| 224 | Feb. 18 | | 4 90 | | | 592 42 |
| | 20 | | 178 50 | | | 770 92 |
| | 23 | | 13 60 | | | 784 52 |
| | 27 | | | 3,000 | | 2,215 48 |

*Exhibit A.—H. M. Haigh, Comm'r*—Continued.

| | | | | |
|---|---|---|---|---|
| Feb. | 28 | 19 25 | | 2,196 23 |
| Mar. | 6 | 150 | | 2,046 23 |
| | 7 | 100 | | 1,946 23 |
| | 11 | 160 60 | | 1,785 63 |
| | 13 | 190 | | 1,595 63 |
| | 16 | 32 | | 1,563 63 |
| | 20 | 100 | | 1,463 63 |
| | 23 | 66 85 | | 1,396 78 |
| | 24 | 49 35 | | 1,347 43 |
| | 25 | 144 68 | | 1,202 75 |
| | 29 | 152 29 | | 1,050 46 |
| April | 1 | 14 01 | | 1,036 45 |
| | 7 | 66 25 | | 970 20 |
| | 12 | 82 16 | | 888 04 |
| | 13 | 100 | | 788 04 |
| | 14 | 5 | | 783 04 |
| | 15 | 63 39 | | 719 65 |
| | 17 | 24 | | 695 65 |
| | 18 | | 5,000 | 5,695 65 |
| | " | | | 174 05 |
| | 19 | 5,521 60 | | 156 28 |
| | 20 | 12 65 | | 143 63 |
| | 22 | 40 20 | | 103 43 |
| | 25 | 100 | | 3 43 |
| May | 1 | 220 43 | | 217 |
| | 9 | 241 65 | | 458 65 |
| | 15 | | 500 | 41 35 |
| | 15 | 147 77 | | 106 42 |
| 225 May | 19 | 21 50 | | 127 92 |
| | 20 | 65 | | 192 92 |
| | 23 | 11 | | 203 92 |
| | 27 | 174 30 | | 378 22 |
| | 29 | | 500 | 121 78 |
| | " | 19 25 | | 102 53 |
| | 30 | 25 | | 77 53 |
| | 31 | 17 | | 60 53 |
| June | 1 | 699 60 | | 639 07 |
| | 2 | 13 | | 552 07 |
| | 3 | 69 07 | | 721 14 |
| | 5 | 9 | | 730 14 |
| | 7 | 212 50 | | 942 64 |
| | 10 | 46 90 | | 989 54 |
| | 15 | 100 | 1,200 | 210 46 |
| | " | 000 | | 110 46 |
| | 16 | 45 24 | | 65 22 |
| | 17 | 192 50 | | 127 28 |
| | 19 | 100 | | 227 28 |
| | 20 | 151 30 | | 378 58 |
| | 21 | 479 20 | | 857 78 |
| | 24 | 6 55 | | 864 33 |
| | 27 | 100 | | 964 33 |
| July | 18 | | 964 33 | |

225¼ *Exhibit B.—H. M. Haigh, Com'r.*

NEW YORK, *March* 23, 1874.

*M'r's E. E. Davenport, in acc't with E. Kinney & Co.*

| | Date. | Debits. | Credits. | Balance. |
|---|---|---|---|---|
| 1865. | | | | |
| Sept. | 27 | | 1,240 00 | 1,840 |
| | 28 | | 600 00 | |
| May | 12 | | 2,952 40 | 4,792 40 |
| | " | 50 00 | | 4,742 40 |
| | 13 | | 500 00 | 5,242 40 |
| | 13 | 100 00 | | 5,142 40 |
| | 16 | | 342 00 | 5,484 40 |
| | " | 500 00 | | 4,984 40 |
| | 30 | 200 00 | | 4,784 40 |
| June | 23 | 332 67 | | 4,451 73 |
| | 27 | 88 00 | | 4,363 73 |
| | 29 | 882 43 | | 3,481 30 |
| July | 6 | 105 60 | | 3,375 70 |
| | 10 | | 5 20 | 3,380 90 |
| | 13 | 36 65 | | 3,344 25 |
| Aug. | 9 | 582 15 | | 2,762 10 |
| | 9 | | 25,000 00 | 27,762 10 |
| | 11 | 5,144 14 | | 22,617 96 |
| | 12 | 333 34 | | 22,284 62 |
| | 14 | 400 00 | | 21,884 62 |
| | 19 | 6,750 35 | | 15,134 27 |
| | 27 | 10,158 00 | | 4,976 27 |
| Sept. | 29 | | 2,000 00 | 6,976 27 |
| Oct. | 2 | 400 | | 6,576 27 |
| | 4 | 2,009 40 | | 4,566 87 |
| | Forward | 28,072 73 | 32,639 60 | |
| 225¼ | Bro't for'd | 28,072 73 | 32,639 60 | 4,566 87 |
| 1865. | | | | |
| Octo. | 5 | 2,019 80 | | 2,547 07 |
| | 6 | 20 40 | | 2,526 67 |
| | 26 | 300 00 | | 2,226 67 |
| Nov. | 2 | 500 00 | | 1,726 67 |
| | 17 | 200 00 | | 1,526 67 |
| | 27 | 275 00 | | 1,251 67 |
| Dec. | 5 | 260 00 | | 991 67 |
| | 13 | 100 38 | | 891 29 |
| | 29 | 200 00 | | 691 29 |
| 1866. | | | | |
| Jan. | 6 | 31 30 | | 659 99 |
| | 9 | 100 00 | | 559 99 |
| | 19 | 50 00 | | 509 99 |
| | 22 | 313 00 | | 196 99 |
| | 30 | 43 90 | | 153 09 |
| | 31 | 150 00 | | 3 09 |
| Feb. | 2 | 15 00 | | 11 91 |
| | Balance | | 11 91 | |
| | | 3,651 51 | 32,651 51 | |
| | Debit balance | 11 91 | | 11 91 |

226 And afterwards, to wit, on the second day of July, in the year of our Lord one thousand eight hundred & seventy-five, an entry was made upon the journal of the court aforesaid in said cause in the words and figures following, to wit:

*Entry Q, p. 632.*

This cause came on for hearing on the pleadings and evidence, and the agreement of counsel that if, under the evidence offered, it should be deemed material to offer further evidence in regard to the state of the account between said E. E. Davenport, guardian, and R. W. Richie, or concerning the reasonable cost of the education and maintenance of plaintiff by her said guardian, that the case should be referred to a master to take further evidence and to state an account thereon; and, counsel being heard, the court on consideration finds that the equity of the case is with the plaintiff, and that she cannot be charged in this action with the expense of her maintenance and education. And the court further finds that plaintiff is the owner of 390 shares in the Western Union Telegraph Company, of the par value of one hundred dollars each, and that her certificate therefor, No. 1536, was on the 23d day of February, 1871, wrongfully surrendered to said defend-
ants, and by said defendants cancelled, and said shares were
227 by said defendant thereupon wrongfully transferred to other parties, and that defendant hath ever since refused to pay to plaintiff the dividends declared on said stock or otherwise to recognize her title thereto. It is therefore considered, adjudged, and decreed that plaintiff recover from defendant, on account of dividends since declared on said stock, the sum of seven hundred eighty dollars, with interest from August 11th, 1874, and the sum of seven hundred and eighty dollars, with interest from October 1st, 1874, together with her costs, and execution is awarded therefor. It is further considered, adjudged, and decreed that unless said defendant, within sixty days from the entry of this decree, shall issue and deliver to the clerk of this court, for plaintiff, a certificate for 390 shares of the stock of said company, of the par value of one hundred dollars each, and of the like grade and qualities with the shares so wrongfully transferred, and again place the same on the books of said defendant in the name of plaintiff, that plaintiff shall recover from defendant the further sum of twenty-nine thousand two hundred and fifty dollars, with interest from June 3d, 1875, and execution is awarded therefor. To all which
228 said defendants, by counsel, except, and prays an appeal to the Supreme Court of the United States, which is allowed, and the bond fixed at $50,000.

And afterwards, to wit, on the thirty-first day of August, in the year last aforesaid, came the said Enoch T. Carsen, Richard Smith, Eli C. Baldwin, and J. H. Rhodes, and filed in the clerk's office of said court their appeal bond herein, which said bond is in the words and figures following, to wit:

*Appeal bond.*

Supreme Court of the United States.

KATHARINE J. DAVENPORT, BY HER GUARDIAN Euretta E. Davenport,
*against*
THE WESTERN UNION TELEGRAPH COMPANY.

Know all men by these presents that we, the Western Union Tel.-

graph Company, a corporation duly created, organized, and existing under and by virtue of the laws of the State of New York, and Enoch T. Carsen, Richard Smith, Eli C. Baldwin, and J. H. Rhodes, of the county of Hamilton, and State of Ohio, are held and firmly bound unto Katherine J. Davenport, of the city of Cincinnati, in the State of Ohio, in the sum of fifty thousand dollars, lawful money of the United States,
229 to be paid to the said Katherine J. Davenport, her executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our successors, heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the 31st day of August, one thousand eight hundred and seventy-five.

Whereas the above-named The Western Union Telegraph Company hath taken an appeal to the Supreme Court of the United States to recover the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Ohio:

Now, therefore, the condition of this obligation is such that if the above-named The Western Union Telegraph Company shall prosecute its said appeal to effect, and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] THE WESTERN UNION TELEGRAPH CO.,
By GEO. T. WILLIAMS, *Attorney in fact.*

230 ENOCH T. CARSEN. [SEAL.]
RICH'D SMITH. [SEAL.]
E. C. BALDWIN. [SEAL.]
J. H. RHODES. [SEAL.]

SOUTHERN DISTRICT OF OHIO, *ss:*

Enoch T. Carsen and Richard Smith, being duly sworn, each for himself says that he is a freeholder within the State of Ohio, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities, and exclusive of property exempt by law from execution.

ENOCH T. CARSEN.
RICHARD SMITH.

Sworn to before me this 31st day of August, 1875.

THO'S AMBROSE, *Clk.*

SOUTHERN DISTRICT OF OHIO, *ss:*

E. C. Baldwin and J. H. Rhodes, being duly sworn, each for himself says that he is a freeholder within the State of Ohio, and is worth the sum of ten thousand dollars, over and above all his debts and liabilities and exclusive of property exempt by law from execution.

E. C. BALDWIN.
J. H. RHODES.

Sworn to before me this 31st day of Aug'st, 1875.

THO'S AMBROSE, *Clerk.*

231 SOUTHERN DISTRICT OF OHIO, *ss:*

On this 31st day of August, 1875, before me personally appeared Enoch T. Carsen, Richard Smith, Eli C. Baldwin, and J. H. Rhodes, to

me known to be the persons described in and who executed the foregoing undertaking, and acknowledged that they executed the same.

THO'S AMBROSE,
*Clerk U. S. Cir. C't, S. D. O.*

Bond and sureties approved.
(Signed)

PHILIP B. SWING,
*U. S. Dist. Judge, S. D. Ohio.*

232 UNITED STATES OF AMERICA,
*Southern District of Ohio:*

I, Thomas Ambrose, clerk of the circuit court of the United States for the southern district of Ohio, hereby certify the foregoing to be a true and correct transcript of the record and proceedings in the case of Katherine J. Davenport, a minor, et al., vs. The Western Union Telegraph Co., as the same are kept in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Cincinnati, this 11th day of October, A. D. 1875, and in the one hundredth year of the Independence of the United States of America.

Attest:
[SEAL.]

THO'S AMBROSE,
*Clerk Cir. C't U. S., S. D. Ohio.*

(Indorsement on cover:) No. 317. The Western Union Telegraph Company, appellant, vs. Katherine J. Davenport, by her guardian, Euretta E. Davenport. S. Ohio C. C. U. S. Filed 23 November, 1875.

C

[redacted]

OF THE UNITED STATES

[redacted]

THE WESTERN UNION TELEGRAPH CO.

*vs.*

HENRY W. DAVENPORT

AND

SAME APPELLANT

*vs.*

KATHERINE J. DAVENPORT

# Argument for Appe[redacted]

# U. S. Supreme Court.

OCTOBER TERM, 1878.

---

| | |
|---|---|
| THE WESTERN UNION TELEGRAPH COMPANY, *Appellant,* *vs.* HENRY W. DAVENPORT. | *No.* 57. |
| THE WESTERN UNION TELEGRAPH COMPANY *agst.* KATHARINE J. DAVENPORT. | *No.* 58. |

## APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

### Statement of the Case.

The defendant is a Corporation of the State of New York, having its principal office in the City of New York; the interests of its constituent shareholders being represented by printed certificates which are transferable at the office of the transfer agent of the Company in the City of New York, as is usual with stock corporations. Previous to the year 1865 it included among the number of its shareholders one Charles Davenport, who died in that year (fol. 34),*

* The references are to the printed folios as numbered in the *first* case. (No. 57.)

leaving two minor children, Henry Wade Davenport and Katharine Josephine Davenport, the respective plaintiffs, in the two actions now submitted, and a wife, Mrs. Euretta E. Davenport, who was subsequently appointed (fol. 35) guardian of the estate of her two children aforesaid, and continued to act in that capacity until the termination of their minority, which occurred some time subsequent to all the transactions now brought in question.

Charles Davenport died possessed of 1170 shares of the stock of the defendant, which stock was afterwards transferred by the executors (fols. 35, 36) upon the transfer books of the company, in three equal portions of 390 shares each, to Mrs. Davenport and to each of the two children by name: and three certificates each for 390 shares were handed to Mrs. Davenport, who, as it now appears, received the two issued to her children in her character as guardian. There was printed on the back of each certificate the usual blank form of transfer and power of attorney (fol. 139). These certificates, with certain Government bonds belonging to Mrs. Davenport, were put for safe keeping in a tin box which was confided by her (*together with the key*) to one Robert Richie, her brother (fol. 37). This box remained in this possession during the year 1871 (fol. 38), no one having access to that box except Mrs. Davenport and said Richie, who kept the key of the same when she was absent from Cincinnati, including the period of her absence in Europe during part of 1871, which last-named absence began about the first day of July (fol. 38).

At some time previous to February 23, 1871, Robert Richie unlocked the box and took from it the certificate of Henry Wade Davenport, and having forged the name of said Henry Wade Davenport to the power of attorney on the back of the certificate (fol. 139), and signed his own name as subscribing witness, sold the certificate and caused the same to

be delivered in that form to the purchaser, who afterwards availed of the forged power of attorney to secure the transfer of the 390 shares on the books of the Company (fols. 190, 30).

Mrs. Davenport was in Cincinnati at and after this time, and remained there until the second week in June of that year, at which time, being about to depart for Europe, she sent for her box, which was brought to her by Robert Richie (fols. 51, 52); but, *without examining* the contents of the box (fol. 50), she returned the same to Richie, and left with him the key. Some time prior to June 20, 1871 (fol. 141), the said Richie in like manner took from the box the certificate of Katharine Josephine Davenport, whose name he forged in like manner to the power of attorney, adding his own name as subscribing witness; and having sold the certificate, it came to be transferred in like manner on the books of the Company to the purchaser.

The reputation of Richie, so far as it could be known to the general public or to us was that he was "a high-toned and honorable banker" (fol. 154); but his sister, Mrs. Davenport, knew him *at the time she entrusted this box and its key to his care to be a necessitous insolvent, and the confessed embezzler of all of her own portion of the telegraph stock which her husband left, as well as other valuable property.*

The manner of the transfer of these shares from the name of Charles Davenport to the two children was such that the signature of the two children was not required, and there is nothing to show that the company had any means of identifying their true signatures, or of knowing or supposing that they were minors. No evidence was given *showing or tending to show any lack of care or diligence on the part of the defendant* or its transfer agent.

Actions were begun in 1874 by Euretta E. Davenport for each of the minor children respectively, demanding the reinstatement of the shares aforesaid

n the names of each of the said children (fol. 10), and after trial had, judgment was rendered declaring that the defendant had wrongfully transferred the stock and was liable for the dividends paid intermediately to the purchaser, with interest; and further directing the defendant to restore the stock as prayed for by the bill; with an alternative judgment for the sum of $29,250, with interest from June 3d, 1875, in favor of the plaintiff in each case.

## Assignment of Errors.

*First*—The Court erred in finding and determining that the plaintiff is the owner of 390 shares of stock in the Western Union Telegraph Company, and that said shares were by the defendant wrongfully transferred to third parties.

*Second*—The Court erred in giving judgment for the plaintiff against the defendant for $780, with interest from August 11th, 1874, and the further sum of $780, with interest from October 1st, 1874, on account of dividends declared on the stock claimed by the plaintiff.

*Third*—The Court erred in adjudging and decreeing that unless the defendant within 60 days from the entry of the decree, should issue and deliver to the clerk of the Court for the plaintiff, a certificate for 390 shares of stock, the plaintiff should recover from the defendant the further sum of $29,250, with interest from June 3d, 1875 (fols. 218, 219).

## Argument on Behalf of Appellants.

I.—Mrs. Davenport, who, in all the transactions set forth, as well as in bringing these suits, acted in place of her children, was guilty of gross negligence, in the safe-keeping of these certificates, by which Keys & Co., and afterwards [through their respectable name and agency] Soutter & Co. and ultimately the defendants' transfer agent, were successfully imposed upon.

The loss which has been suffered is the immediate result of this guardian's most culpable disregard on her part of the plainest dictates of prudence.

She left documents having in law a quasi negotiable character, and the possession of which by the consent of the owner carries with it a strong presumption of rightful authority over them, with one who by repeated abuses of her confidence, and repeated embezzlements of property to a large amount, *had become known to her as irresponsible and untrustworthy in a high degree.*

She was sister of Robert Richie, concerning whom she says (folio 74), "I was not as particular as I ought to have been; he being my brother I trusted him too much," adding (folio 65), "He never was much in my confidence." In addition to the general knowledge which she must be deemed to have possessed of the character and circumstances of her brother, she knew he was under a temptation to which he had before yielded, to misappropriate property in his charge; that he was pecuniarily irresponsible and morally untrustworthy. Upon the death of her husband there was among his assets (fol. 44) a note for $5,000, made by R. W. Richie, which "never was paid, not even the interest," and Mrs. Davenport had (folio 56) "always considered him very poor." In 1866 she permitted him to obtain $5,000 in bank shares, belonging to the estate and deposited as security for his note, and knew by his own confession to her that he had "invested it in

"stock and lost it" (fol. 82). In respect to the sale of certain other stocks known as "Russian Extension" stock, belonging to herself and her two children, which he had also sold in 1867, she was doubtful whether she received all the proceeds (fols. 76, 143, 79).

In 1870 (folio 47) she had entrusted to him to sell 400 shares of Western Union Telegraph stock, which produced about $13,000 (fol. 155) and this considerable sum of money, constituting nearly, if not quite, one-fifth of Mrs. Davenport's private property, he appropriated to his own use without her leave or knowledge (fols. 73-74). She says "I objected at first but was prevailed upon to sell it, and never heard of the money or stock afterwards" (fol. 47). (Fol. 49), "I did not get the proceeds of the sale at all. I came in and asked Robert about the stock, and *he said it was all gone.*" These transactions were all made by the same brokers, Messrs. Keys & Co. Mrs. Davenport did not communicate to them any complaint that she had not received her money, *but allowed them to continue under the impression that Richie was her trusted and authorized agent* (fols. 154, 156, 175, 183).

In respect to the disbursements of money for her, she believed that a barn built by him at an apparent cost of $1,000, did not cost more than $500 (fols. 108 and fol. 173). When she heard from another source (fol. 39) that the certificates were *not in the box* her previous knowledge and suspicions directed her unerringly to the truth; and she wrote to Richie asking him if it was true that he had *sold* her children's stock.

That she understood his character and mistrusted him, may be gathered from Richie's discontented answer to the question (fol. 166), "Who assisted or aided Mrs. Davenport in business matters after her husband's death?" Ans. "The "executors of her husband's will, I. H. Wade and "Frederick Whitmore, for about a year. It is a "pretty hard question to answer as to who her

"advisers were." And yet she allowed him to act for her in such manner that it became "well understood that I (Richie) attended to all her business" (fol. 175, 183), and that eventually Keys & Co. were made the innocent agents of imposing on us his forgeries (fols. 157–159, 156), they being under the belief, *which she knew to be unfounded*, that he was "an honorable and high-toned banker" (fol. 154).

Upon her departure for Europe, although she relied wholly upon her brother to answer her drafts for expenses, for which purpose she had little or no productive property, she had sufficient caution to refuse him (fol. 53) the power of attorney to sell her bonds. "A day or two before I went away he asked me to give him the power of attorney, saying that he might have to sell the bonds. I declined. He said it would be well to leave him the power of attorney, *and that I refused to do.*" On the day before her departure she sent for the tin box, but *did not open it* (fol. 50, 86). On the last previous occasion when she had opened the box, she did not examine it to see whether her certificates remained intact. *Had she examined the box on the day of her departure, she would have found that her bonds had already been removed* (fol. 159, 50), *as well as the certificate of Henry W. Davenport* if not that of Katharine also, which was sold on the 20th of June, at which time Richie represented, what was probably true, that his sister was then at the Burnett House, Cincinnati (fol. 159). If, however, Katharine's certificate had not yet been abstracted, a little ordinary prudence, then, would have prevented the loss of that certificate at least; and might have enabled us to act in time and recover from Richie or the purchaser the whole or some part of the other lot of stock.

Question (fol. 50), "Were your government "bonds which you have spoken of in that tin box, "the last time you saw it before you left for "Europe?" Ans., "The last time I saw the box *I* "*did not have it open.*"

"stock and lost it" (fol. 82). In respect to the sale of certain other stocks known as "Russian Extension" stock, belonging to herself and her two children, which he had also sold in 1867, she was doubtful whether she received all the proceeds (fols. 76, 143, 79).

In 1870 (folio 47) she had entrusted to him to sell 400 shares of Western Union Telegraph stock, which produced about $13,000 (fol. 155) and this considerable sum of money, constituting nearly, if not quite, one-fifth of Mrs. Davenport's private property, he appropriated to his own use without her leave or knowledge (fols. 73–74). She says "I objected at first but was prevailed upon to sell it, and never heard of the money or stock afterwards" (fol. 47). (Fol. 49), "I did not get the proceeds of the sale at all. I came in and asked Robert about the stock, and *he said it was all gone.*" These transactions were all made by the same brokers, Messrs. Keys & Co. Mrs. Davenport did not communicate to them any complaint that she had not received her money, *but allowed them to continue under the impression that Richie was her trusted and authorized agent* (fols. 154, 156, 175, 183).

In respect to the disbursements of money for her, she believed that a barn built by him at an apparent cost of $1,000, did not cost more than $500 (fols. 108 and fol. 173). When she heard from another source (fol. 39) that the certificates were *not in the box* her previous knowledge and suspicions directed her unerringly to the truth; and she wrote to Richie asking him if it was true that he had *sold* her children's stock.

That she understood his character and mistrusted him, may be gathered from Richie's discontented answer to the question (fol. 166), "Who assisted or aided Mrs. Davenport in business matters after her husband's death?" Ans. "The "executors of her husband's will, I. H. Wade and "Frederick Whitmore, for about a year. It is a "pretty hard question to answer as to who her

"advisers were." And yet she allowed him to act for her in such manner that it became "well understood that I (Richie) attended to all her business" (fol. 175, 183), and that eventually Keys & Co. were made the innocent agents of imposing on us his forgeries (fols. 157–159, 156), they being under the belief, *which she knew to be unfounded*, that he was "an honorable and high-toned banker" (fol. 154).

Upon her departure for Europe, although she relied wholly upon her brother to answer her drafts for expenses, for which purpose she had little or no productive property, she had sufficient caution to refuse him (fol. 53) the power of attorney to sell her bonds. "A day or two before I went away he asked me to give him the power of attorney, saying that he might have to sell the bonds. I declined. He said it would be well to leave him the power of attorney, *and that I refused to do.*" On the day before her departure she sent for the tin box, but *did not open it* (fol. 50, 86). On the last previous occasion when she had opened the box, she did not examine it to see whether her certificates remained intact. *Had she examined the box on the day of her departure, she would have found that her bonds had already been removed* (fol. 159, 50), *as well as the certificate of Henry W. Davenport* if not that of Katharine also, which was sold on the 20th of June, at which time Richie represented, what was probably true, that his sister was then at the Burnett House, Cincinnati (fol. 159). If, however, Katharine's certificate had not yet been abstracted, a little ordinary prudence, then, would have prevented the loss of that certificate at least; and might have enabled us to act in time and recover from Richie or the purchaser the whole or some part of the other lot of stock.

Question (fol. 50), "Were your government "bonds which you have spoken of in that tin box, "the last time you saw it before you left for "Europe?" Ans., "The last time I saw the box *I* "*did not have it open.*"

Question (fol. 50), "Had you duplicate keys to "the box?" Ans., "Not that I know of; I never "saw but the one key."

Question (fol. 51), "Did you keep the key of the box from the time when you sold that telegraph stock till the time when you left for Europe?" Ans., "I had the key part of the time, and Rob- "ert had it part of the time. When it was ne- "cessary for him to attend to the coupons, "and I was out of the city he had it; when "I went away he had the key; the day before I "left for Europe I sent for the box to be brought to "me; *Robert came with it, carried it over to me,* "*and said that it would be very foolish for me to* "*carry so valuable a box, and to leave it in the* "*safe of the Fourth National Bank; he carried it* "*back.*"

Question. "You supposed the government bonds "were then in it?" Ans. "I did, I supposed they "were all there."

It is believed that these facts would justify a verdict of gross negligence in a suit by the minors against their guardian; and that certainly no greater degree of negligence than would be required for their recovery is required for our defence.

II.—The defendant is entirely free from all fault or negligence.

The American practice of issuing certificates of stock, with the clause, "transferable in person or by "attorney, on the books of the Company, only on "surrender and cancellation of this certificate," has had the effect to give to the actual possession of the certificate, as a muniment of title, probative force almost irresistible. It is impossible that any great corporation should know the persons or signatures of a constantly changing mass of stockholders; and

some risk of loss is inseparable from the practice of giving to certificates this ease and convenience of negotiability. The custom is maintained for the benefit of the stockholder, who alone has power by the care which he may take of the certificates to overcome the risk with caution. His being the benefit, and his the opportunity to guard against loss, the risk should bear primarily and principally upon him; and he should be held culpably negligent, if wanting in any degree in the care which he takes of papers, the mere possession of which may be so easily availed of to impose upon others.

In Lanier *v.* the Bank, 11 Wall., 377, this Court recognized the quasi-negotiable character which American custom had given to corporate stock certificates, saying, "It is in obedience to this requirement that stock certificates of all kinds have been construed in a way to invite the confidence of business men * * * Although neither in form or character negotiable paper, they approximate to it as nearly as practicable."

It does not appear that any similar custom prevails in England, and it should be observed therefore, that most of the English cases are cases where the Bank, acting as the paid transfer agent for other corporations, has been sued.

In Goodwin *v.* Robarts, Law Rep., 10 Exch., 353, the Courts unanimously sustain the *quasi* negotiability of a new species of security, consisting of a government agent's written receipt for money, issued by the agents of a foreign State, declaring the bearer entitled to definitive bonds on payment of all installments, on the ground of public convenience, and because, as the Court says, "as requiring some "more cumbrous method of assignment we should "materially hamper the transactions of the money "market with respect to it and cause great public "inconvenience. No doubt," p. 353, "there is an "evil arising from the facility of transfer by de-"livery, namely, that it occasionally gives rise to

"the theft or misappropriation of the security to "the loss of the true owner. But that is an evil "common to the whole body of negotiable secur- "ities. It is one which may be in a great degree "prevented by prudence and care. It is one which "is counterbalanced by the general convenience "arising from the facility of transfer."

An analysis of the juridical ground of responsibility which underlies the judgment in the present case will fail to reveal any of those recognized bases of obligation by tort or promise of which the law takes notice. For the purpose of such an analysis it will be proper to call attention to the peculiar relation of the plaintiff and the defendants in respect to the business of keeping a register of stock transfers.

The plaintiff is a stockholder or constituent member of a large partnership which for mutual and general convenience has been incorporated in order among other advantages resulting from such an organization that the respective members may be able to dispose of their interests and introduce new members to the partnership without the consent of the other partners. There is *no provision in the law* of New York under which the association is incorporated and where the business in question was done, requiring it to *keep a register* of stockholders, or to *permit transfers*. For this general and mutual convenience *inter sese* a method for the making of these transfers and for evidencing the creation, continuance or discontinuance of interest in the partnership property and business, customary with corporations, has been voluntarily adopted, and consists in preserving a record in which these various transfers are entered. For the same motives of convenience among themselves, the partners have adopted a practice of issuing to each member of the concern a certificate which states the fact as to his ownership, with certain conditions upon which that ownership may be transferred. All this is no part of the partnership or corporate business. The association was formed, and by law permitted to take on corporate

character for the sole purpose of doing a telegraph business. It would fulfill all the objects of its creation if no stock were ever issued or transferred. Its profits are derived solely from the telegraph business, which all the members prosecute together under the corporate name. There is no profit or inducement to the corporation, as a whole, to provide the means and record of transfer before referred to. That is ultimately for the individual and separate interests of such of the partners as may wish to avail of it, and in no sense for the corporate interest. The work cannot be done by the corporation as such, but is done by some subordinate or agent. It is doubtless well known, as a matter of fact, that in the City of New York all corporations whose stock is dealt in at the Stock Exchange are required by a rule of the last-named corporation to appoint as their transfer agent certain other independent corporations of that city, and those corporations for a consideration paid at the time by the persons interested in the transfer, and not by the corporation whose stock is transferred, keep a public record of the actual amount of stock issued and of the person to whom the same belongs, independent of the books and business of the principal corporation.

If negligence were, therefore, upon the present facts, fairly imputable to this agent, we should have the case of one of several principals of an agent resorting to his co-principals for a remedy for the negligence of the common agent in a matter in which they have neither interest or—separate from him—any control.

In other words, some members of the corporation who might never require this convenience are thus without premium for the risk forced to indemnify those of their partners who do require it, for the negligence of the common agent.

But even if we follow the cases cited on these points in which corporations in somewhat similar circumstances have been held liable for the negli-

gent acts of their agents, we shall find that no such negligence as is requisite for such a recovery is pleaded or proven in this case.

The stock came in the ordinary way through a respectable house in New York from a respectable house in Cincinnati, with every circumstance of apparent regularity. The transaction is one out of an enormous mass. Had the Company's agent been possessed of an impossible power of suspecting what appeared to be honest, it could have done no more than decline to make the transfer until the signature to the power of attorney had been proved in a lawful manner. Upon such refusal the stock would have been returned to the house in Cincinnati which sent it forward, and by them to Mr. Richie who delivered it to them, and he having made acknowledgment as *subscribing witness* in the manner provided for by the Statutes of New York, as cited below, it would have been returned to New York and the Company upon that proof alone *would have been compellable to make the transfer or to answer in damages to the purchaser.*

Holbrook *v.* N. J. Zinc Co., 57 N. Y., 316, 324.

The Statutes of New York, in respect to the authentication of signatures to writings by the attestation of subscribing witnesses and the effect of such authentication are as follows:

§ 116. Every written instrument, except promissory notes and bills of exchange, and except the last wills of deceased persons, may be proved or acknowledged in the manner now provided by law for taking the proof or acknowledgment of conveyances of real estate; and the certificate of the proper officer endorsed thereon shall entitle such instrument to be received in evidence on the trial of any action, with the same effect and in the same manner as if such instrument were a conveyance of real estate.

Section 116, Revised Statutes of New York, Vol. III., page 671. (Banks' 6th Edition.)

§4. To entitle any conveyance hereafter made, to be recorded by any county clerk, it shall be acknowledged by the party or parties executing the same, *or shall be proved by a subscribing witness thereto*, before any one of the following officers:

1. If acknowledged or proved within this State, the Justices of the Supreme Court, the Judges of County Courts, Mayors and Recorders of cities, or Commissioners of Deeds [Justices of the Peace in towns]; but no County Judge or Commissioner of Deeds for a county or city shall take any such proof or acknowledgment, out of the city or county for which he was appointed.

2. If acknowledged or proved out of this State and within the United States; the Chief Justice and Associate Justices of the Supreme Court of the United States, District Judges of the United States, the Judges or Justices of the Supreme, Superior or Circuit Court of any State or Territory within the United States, and the Chief Judge or any Associate Judge of the Circuit Court of the United States in the District of Columbia; but no proof or acknowledgement, taken by any such officer, shall entitle a conveyance to the recorded, unless taken within some place or territory to which the jurisdiction of the Court to which he belongs shall extend.

Section 4, Revised Statutes, N. Y., Vol. II., p. 1138. (Banks' 6th Edition.)

§5. The proof or acknowledgment of any deed or other written instrument required to be proved or acknowledged in order to entitle the same to be recorded or read in evidence, when made by any person residing out of this State, and within any other State or Territory of the United States, may be made before any officer of such State or Territory, authorized by the laws thereof, to take the proof and acknowledgment of deeds; and when so taken and certified as herein provided, shall be entitled to be recorded in any county in this State, *and may be*

*read in evidence in any Court* in this State in the same manner, and with like effect as proofs and acknowledgments taken before any of the officers now authorized by law to take such proofs and acknowledgments: *provided* that no such acknowledgment shall be valid unless the officer taking the same shall know or have satisfactory evidence that the person making such acknowledgment is the individual described in, and who executed the said deed or instrument.

Section 5, Revised Statutes, N. Y., Vol. II., p. 1140. (Banks' 6th Edition.)

Thus it appears that it was not in the power of this defendant or its agents to have ascertained the truth in respect to this transfer by the adoption of any means customarily employed by business men or provided for by law. *Certainly it is not to be assumed that Richie, already liable to punishment for forgery, would have exposed his crime by refusing a formal acknowledgment of his own signature;* a falsifying subscription being an act for which there is no penalty. That this Company, or, to speak more correctly, the plaintiff's copartners, should, under such circumstances, be compelled to come forward and indemnify her for the failure of its and their common agent to make use of an extraordinary, inconvenient and probably ineffectual means of ascertaining the truth about this ordinary and unsuspicious transaction, seems to introduce a new principle of obligation into the law, and to *punish judicially* one who has committed no fault and omitted no precaution consistent with the nature of the business. If, indeed, this judgment is to be sustained, it must be admitted that a case has been found in which an innocent, gratuitous bailee, acting with due diligence and good faith, can be made to bear a loss having its rise in the negligence of the other party, without the power by the exercise of any sagacity, foresight or caution fairly to be expected in such a matter to protect itself from a foreordained and predestined liability.

III.—The doctrine of equity that the plaintiff must come with clean hands is applicable to cases like this; and condemns him to lose his suit, if by negligence in the safe-keeping of his certificate he has enabled a third person to impose sucessfully upon the company, while acting according to the approved general course of business and without negligence.

In this case the Court, acting as the expounder of the law and practical minister of justice, is asked to lift a burden of loss which has fallen (and without their intervention would continue to rest) on the shoulders of one who asserts entire innocence of any participation in the cause of the loss or injury, and to place it upon the shoulders of another who asserts equal innocence. This intervention to change an existing state of things,—the result of circumstances which, except as negligence may be shown, implicate no one morally, who is before the Court,—gives rise to questions of delicacy and difficulty.

After all is done which the recognized imperfections of human judgment and laws permit, cases will arise in which it will be doubtful whether the true rule of justice for the particular case is ascertainable.

In cases analogous to the present, the Courts have found themselves under the necessity of balancing and discriminating between axioms of law which have sometimes seemed in the particular case to be inharmonious.

Thus, it is indisputable, as a general proposition, that no man's property can be taken from him without his consent: And as between a corporation and a shareholder, whose shares have been ostensibly transferred by the corporation to another person, it has been argued that no title has passed, or can pass, under such circumstances, and that the original owner must be recognized in all respects as before the erroneous transfer; while the purchaser,

in good faith, of certificates issued upon such erroneous transfer, is at the same time entitled to claim a similar recognition under the ordinary principles of estoppel.

On the other hand it has been argued that such transfer can never, as matter of fact, take place except through the act of one or the other of the parties setting some active cause or agency in motion, or giving authority or apparent credit to the means, by which the transfer is induced; and we are by that circumstance remitted to the rule that where one of two innocent parties must suffer, he by whose agency the loss has been caused, or made possible, shall bear it.

The recognition of this, as a controlling rule of law, has introduced into cases of this character the ordinary doctrine of negligence, which shows itself in all the cases, beginning with the earliest (Ashby *vs.* Blackwell, Ambler) and ending with the latest reported case (Pratt *vs.* Taunton, 123 Mass.)

Thus, in Ashby *vs.* Blackwell, Ambler 503, it appeared in evidence "that by an ancient order "of the company * * * no transfer was "to be made of their stock by authority of any "letter of attorney executed in the country, unless attested by the minister of the parish and "one of the churchwardens, nor by a letter of "attorney executed in town, unless attested by two "housekeepers known to one of the directors or "to the secretary of the company." The forged letter of attorney, authorizing the forger to sell out and transfer certain stocks, "attested by two names "which had no addition to them, was produced to the "Secretary of the Company, who asked Price (the "forger) who they were. He answered that the plaintiff executed the letter of attorney in Saville Row, "and that the witnesses were housekeepers there, and "upon receiving such answer the Secretary wrote "against their names 'Saville Row,' and transferred "the stock."

a for

In fact the witnesses were not housekeepers at all. Lord Northington, Chancellor, said, "the Company "(or, which is the same thing, Jeffreys, their secre- "tary) appears to have examined this letter of attor- "ney, but has been grossly negligent in doing it. "The witnesses had no place of abode added to their "names, but upon Price's representation the Secre- "tary added 'Saville Row.' The forgery is ob- "vious on comparison with the handwriting of Mrs. "Ashby, subscribed to receipts for dividends which "she formerly received herself, and as it appears to "the fourth letter of attorney. * * * There can "no public detriment happen if this decree should "make the Directors of this Company and the other "companies more attentive to their office, and trust "less to their servants." And in the last case, Pratt *v.* The Taunton Copper Co., 123 Mass., 111, Grey, *Ch. J.*, says: "The plaintiff was the owner of "shares in each of the defendant corporations, and "held certificates therefor, which were taken from "her house without her knowledge, and together "with a forged power of attorney in her name to the "corporation, delivered to W. N. Field & Co., "brokers, for sale." And page 112: "It is quite "clear that the plaintiff cannot be deprived of her "stock without consent or *negligence* on her part." In the case in Ambler, there was absolutely no suggestion of negligence on the part of the owner, nor does the case afford evidence that any custom then existed like that now existing, of the issue of certificates with blank powers of attorney upon the back. The case was, therefore, one of a naked forgery of a power of attorney, concerning which the owner had given no credit or facility to the forger. In such a case the language of the Court, as follows: "A Trus- "tee, whether a private person or a body corporate, "must see to the reality of the authority empower- "ing them to dispose of the trust money," is entirely appropriate.

In the case of the Bank of Ireland *v.* Evans'

Charities, 5 H. of L. Cases, 389, which was an action of trespass on the case by the Trustees against the Bank, for refusing to transfer certain stocks which formerly stood on the books of the Bank in the name of the Trustees, the defense was that the stock had already been transferred under powers of attorney, with the seal of the Trustees affixed; to which, however, the plaintiff answered that the seal had been affixed without authority, and the question was, had they so carelessly kept the seal as to have facilitated its unlawful use, and thus have lost their cause of action. The Lord Chief Justice charged at the trial that if the loss resulted in any part from their negligence in leaving the seal where it could be fraudulently used, the verdict should be for the Bank. The verdict was given accordingly for the Bank. On appeal by the Trustees, Perrin and Crampton, *J. J.*, thought there was *no evidence* that the plaintiff furnished *any occasion* for the fraud and deception, and consequently the direction was wrong, and a *venire de novo* was awarded. Upon the second trial, judgment by default was had for the plaintiff, and a record was made up without noticing the first trial, and the case was now considered on appeal upon the question of negligence. The counsel for the Trustees based their claims to recover (p. 399) upon that ground, and argued that a fault had been committed; that the banker had an opportunity of inquiring, by means of the attesting witnesses, and that the evidence showed what if they inquired they would have found; that the bankers had been guilty of negligence, which was not the case in The Bank of England *v.* Davis, &c., &c. The House of Lords held that the care proved to have been taken by the Trustees of their seal in that case was sufficient to entitle them to recover.

In the case of Pollock *v.* National Bank, 3 Seld., the prevailing opinion is very short, and does not reveal how far the question of negligence was in-

volved in the case. Having been favored with an examination of Mr. O'Conor's points, as counsel in that case for the plaintiff, it appears that he relied strongly upon the absence of any negligence in the plaintiffs. In that case the certificates were locked up in a pocket-book, and merely handed to the person who misappropriated them, to be deposited in the bank vaults. The following are extracts from Mr. O'Conor's argument, the italics being his own:

"They asserted that their stock certificates were "*locked up* in a leather pocketbook and were merely "handed to their brother to be by him deposited in "the bank vaults," and again, "this witness proved "that the certificates were *locked up* in a pocket-"book to which Andrew Pollock had no access "*except by fraudulent means.*"

The same doctrine is practically applied in equity in such cases through the equitable doctrine, that the suitor must come into Court with clean hands; in other words, that the plaintiff must succeed on the justice and conscience of his own case and on that alone; and he is not considered to have clean hands and a good conscience if he has willfully and negligently permitted another to assume a position enabling him to impose upon the Company; and this notwithstanding the general rule that a man can not without his consent, express or implied, be deprived of his property.

See note to Sloman *v.* Bk of Eng., 14 Simon, 488. (Am. Ed.)
Davis *v.* Bank of Eng., 2 Bing., 409.

It is believed that the most careful scrutiny of the authorities will reveal no rule more stringent upon the corporation than this: That at law the plaintiff cannot recover damages if he has been guilty of negligence by which the defendant without negligence on his own part, and while acting in the customary way has been led to make or permit an unauthorized transfer of stock; and that in equity he will not be permitted to have a remedy by the speci-

fic restoration of his name to the books unless he comes into Court with clean hands; and he does not do this when he has by his conduct induced or favored or indeed (without necessity) made it possible, that the other party should be imposed upon.

The following is a statement if not of all, at least of the principal cases in England and this country of this kind additional to those already referred to.

In Coles *v.* Bank of England (37 Eng. Com. Law R., 134), 10 Ad. & Ellis, 437, the plaintiff was held to have disentitled herself, by her negligence in receiving dividends on a reduced amount of stock, from holding the bank liable to pay her dividends on a larger amount, the reduction having been made by a fraud, which she had, through her own neglect, failed to discover.

The Court say: "The argument was, that the "testatrix had, by *gross negligence*, brought about, "or at least greatly contributed to produce, the loss "which has accrued; so that her representatives are "precluded from complaining of the bank in respect "to it. The proof of this was said to result from "the facts found by the jury on questions which I "submitted to them, namely, that the testatrix, "though she was herself defrauded, and *did* "*not know* of the diminution of her stock, yet "had the *means* of knowing it, and was guilty "of *gross negligence* in receiving the dividends on "the reduced sums without objection; and that the "bank was not guilty of any negligence in making "the transfers and paying the dividends. In thes- "particulars, the case bears a strong resemblance "to *Hume* v. *Bolland*, Ry. & M., 371 (21 E. C. L. R., "460), as reported in *Ryan* v. *Moody*, which was "not mentioned in the argument here, where bank- "ers had, in their books, credited their employers "with dividends as received, and were held to be "bound by their own entries, though the money "had never been received by the house, but had "been fraudulently obtained by one of the part- "ners, and kept for his own use, BEST, *C. J.*, asking

"the jury whether the plaintiffs had acted negli-
"gently, which the verdict negatived, whether the
"bankers had not acted with gross negligence,
"which was affirmed" (page 140).

"Precisely the same doctrine was laid down by
"the same learned Chief Justice and the whole
"Court of Common Pleas, in *Davis* v. *The Bank*
"*of England*, 2 Bing., 393, 409 (9 E. C. L. R., 444),
"to which the plaintiffs have recourse on this oc-
"casion. 'We agree,' that if it had appeared that
"'the bank had paid these dividends to persons to
"'whom (if the plaintiff had informed them of the
"'forgeries *as he ought to have done*), they could
"'have refused to pay them, he cannot recover such
"'dividends in this action.' 'But we say that it
"'does not appear on this case' that they have so
"paid them; 'no evidence of any such payment
"'appears.'"

"If, then, it had appeared that, *through the de-*
"*fault* of Davis, the bank had paid away his divi-
"dends, he would not have been entitled to recover.
"Now in this case the jury have, in effect, found
"that the testatrix's *gross negligence* led the bank
"to believe those transfers duly made, of which her
"executors now complain."

"The facts, then, which have been found by the
"jury in this case, entitle the defendants to a ver-
"dict on the plea of not guilty. They also furnish
"evidence on the second and third pleas, in which
"it is alleged that the testatrix was not a proprietor
"of the stock; for we are of opinion that notwith-
"standing the strong words of Stat. 18 G. 2, C. 9, a
"stockholder *may so conduct himself as to be pre-*
"*cluded from claiming in that character.*"

In Cottam *v.* Eastern Counties Ry., 30 Law Jour-
nal R., Chan., 217, S. C., 1 Johnson and Heming,
243, railway debentures or bonds registered in the
names of three trustees, were left in the custody of
one, with the consent of the others, and he forged
their names to a transfer deed, delivered the bonds,

and caused the transfer to be entered in the regular way in the Railway Company's books.

The Court compelled the Railway Company to vacate the transfer, on the ground that "there *was* "*no laches of any sort* in leaving him (the co-trus- "tee) in possession" of the bonds.

In Donaldson *v.* Gillot, 12 Jurist, N. S., 959, Law Rep., 3 Equity, 274, the plaintiff purchased certificates and handed them, with the transfer signed by himself, to his broker, in order to have them registered in his name. This was not done. Afterwards the broker, by a fraud, induced the plaintiff to cancel his signature to the deed of transfer, and by thus possessing himself of the certificates and the transfer, the broker was enabled to obtain from the seller of the shares a second transfer to himself, on which the broker registered the stock in his own name. Afterwards, being pressed to security for an outstanding loan, the broker assigned the shares, but before the lender thus secured could get them registered in his own name the fraud was discovered.

The question being to whom the shares should be transferred on the Company's books, the Court held that the shares thus standing in the name of the broker belonged to the plaintiff, and should be transferred to him ; that the lender had not advanced anything on the security of the shares, and that the plaintiff was *not guilty of negligence* in handing the certificates and transfer to his broker for registration, and his title was not divested by the broker's fraud.

No claim was made that the Company was liable for acting on the second and fraudulent transfer.

Midland R'y Co. *v.* Taylor's Ex., 8 House of Lords Cases, 751, was a suit in equity in which a railroad company was held liable for making a transfer of stock standing on its books in the joint names of two persons, the testator and K, who were partners in trade.

By Statute the Company was bound to keep a register of the names of the shareholders, and to transfer their shares upon receipt of a deed of transfer, executed not only by the owner but also by the buyer, which was to be deposited with the Company and noted in brief in its books. Thus the Company always had in its possession a genuine signature of each of its stockholders, by which it might ascertain the genuineness of a subsequent signature. No certificates of the stock were issued by the Company. One of the joint owners of the shares in question prepared a deed of transfer, executed it himself, forged his partner's signature to it, and delivered it to the Company, and the Company thereupon transferred the stock.

Neither of the partners had any authority to execute deeds in the name of the other, and nothing had been done or omitted by the testator to enable his co-owner to commit the fraud.

The Company's defense was placed solely upon the ground that the forgery was not discovered nor the suit brought until after the death of the defrauded partner, and that as the survivor would have been entitled to transfer the shares by deed executed after the testator's death, the invalidity of the deed of transfer at its date had become of no importance.

But the Court rejected this defense and gave judgment for the plaintiff.

In Tayler *v.* Great Indian Peninsular R. Co., 4 De Gex & Jones, 559, the plaintiff executed a stamped deed of transfer of shares, with the quantity of shares, the distinguishing numbers, and the name of the transferee all in blank. There were two kinds of shares in the Company, one of £20, the other of £2, and the plaintiff intended to sell his £2 shares. His broker fraudulently sold a part of the £20 shares to an amount covered by the stamp, and inserted that quantity, leaving the distinguishing numbers of the shares and the names of the pur-

chasers in blank, and the purchasers themselves made these insertions in the deeds. Before the transfers had been completely registered on the Company's books, the plaintiff discovered the fraud and sued the purchasers and the Company to restrain its consummation.

It appeared that the custom of the Stock Exchange was to treat the broker having possession of blank transfer deeds *and of the certificates*, as the authorized agent of the transferor to fill up such blanks; but the plaintiff had not received his certificates from the Company, and they were in fact obtained from the Company by the plaintiff's broker, "without his sanction or authority" (page 572).

It also appeared that the plaintiff had been cheated out of the £2 shares which he intended to sell by "a previous fraud *committed by the same broker* "which HAD NOT BEEN DETECTED" (p. 571).

It was argued for the purchasers "that they, by reason of the plaintiff's imprudent conduct (for "neither did he act prudently), have an equitable "title to the shares superior to his" (p. 570). The Court held, however, that the "general principle "that whenever one of two innocent persons must "suffer by the acts of a third, he who has enabled "the third person to occasion the loss must sustain "it. * * * They might well apply to this case if "the plaintiff's broker had *before* the sales, and *with-* "*out* the knowledge of these defendants, filled in "not merely the number of shares transferred, but "also the numbers of the shares in the books of "the Company and the names of the transferees, but "* * * these defendants must be taken to have "known that the deeds of transfer when filled up "by *them* have no legal validity" (p. 574).

The purchasers' appeal from the decree against them was dismissed.

In *ex parte* Swan, 7 Common Bench, N. S., the Court was divided upon the question whether the negligence of the owner of shares in executing unnecessary blank transfer deeds, imposed upon him

by his agent, which the agent subsequently filled up so as to cover the shares in question, and thus obtained their transfer on the Company's books, would preclude him from obtaining a reinstatement of his name on the books of the Company. Two of the Judges held that the original owner had by his negligence induced the loss. They considered that the certificates, without which the fraud could not have been consummated, had been allowed to get into the agent's possession by neglect of the owner, in giving the agent a key to the box in which they were kept (pp. 436, 438). Williams, *J.*, held that the agent would not have got possession of the certificate but for the *negligence* of the *banker* in whose custody the owner had placed it, and that this neglect could not have been expected by the owner. He says, p. 447:

"The *bankers* with whom the certificates of the "shares had been deposited must have been guilty "of *negligence* in allowing them to be abstracted. "It is one thing to say that a man shall be answer- "able for such immediate consequences of his acts "as a reasonable man might well foresee and dread, "and would therefore shun. But it is another and "very different proposition to maintain, that a man "shall forfeit his property because he has done an "act which will not be perilous unless *others* are "also guilty of misconduct, which that act does not "cause."

In *re* Bahia and S. Francisco R'y, Law Rep., 3 Q. B., 584, the Company being bound by Statute to keep a share register, was held liable to replace shares transferred on a forged power. The certificates had been left by the owner with a *broker of good character*. Nothing else appears to have been done or left undone by the owner.

In Johnston *v.* Renton, Law Rep., 9 Eq., 181, certificates were left with a bank manager *in good standing* for safe keeping, who receipted

for the certificates, and the owner notified the Company that any notice to be sent to him connected with the shares should be directed to the bank. When the certificates, with a transfer forged by the bank manager, were presented to the defendant corporation for transfer, the Company sent a notice of the proposed transfer directed to the plaintiff at the bank, but receiving no answer, made the transfer.

The Court held that the plaintiff was entitled to be reinstated in his shares by the Company on the statutory register.

In Sewall *v.* Boston Water Power Co., 4 Allen., 277, the plaintiff executed with due care an assignment of 50 shares, being a part only of the shares represented by his certificate, which was for 200.

By fraud or mistake the assignment was mutilated and altered, so that, in one part of it, it covered the whole 200 shares, and in the other only 50. The transfer agent of the Company assumed to correct the obviously contradictory language of the assignment, so as to make it clearly cover the whole 200 shares, and then transferred the whole amount. Nothing had been done by the plaintiff to facilitate the alteration.

The Court in giving judgment for the plaintiff say: "If it" (the alteration) "was a forgery, it would "be void and no one could acquire a title under it, "*unless the plaintiff* should be guilty of *negligence* "in respect to it" (p. 280). "If the plaintiff's care- "lessness had been such as to excuse the transfer "of the stock to other parties, he could not now "claim the stock. * * * Coles *v.* Bank of Eng- "land, 10 Ad. & Ellis, 437, was a case of the transfer "of stocks which were not negotiable. The transfer "by the bank was excused because the testator had "conducted in the matter with gross carelessness. "Therefore, *whether the paper be negotiable or not,* "*the law is the same; the plaintiff must exercise* "REASONABLE CARE ADAPTED TO THE CIRCUMSTANCES "OF THE CASE; and so must the defendant" (p. 282).

In Pratt *v.* Taunton Copper Co., 123 Mass., 110, the certificates were taken from the plaintiff's house without her knowledge, and "*without con-* "*sent or negligence* on her part" (p. 112), and her name was forged to the power, the shares sold at auction, and a new transfer and certificate obtained in the name of the auctioneers, who sold them to a purchaser who took a new transfer and certificate from the company. The purchaser was made a co-defendant with the company.

The Court held that it was "quite clear that the "plaintiff could not be deprived of her stock with- "out consent or *negligence* on her part, and that "the power of attorney in her name being forged," she might maintain the bill as against the corporation.

In Penn. R. R. Co.'s Appeal 5 Weekly Notes of Cases, 22 (decided in January, 1878), the Company had made a transfer on a power of attorney left in blank by the prior owner at his death, and handed by his executrix (the plaintiff) to an attorney in *good repute*, who, thirteen years after the death, forged the name of the deceased to two notes, and transferred the stock and blank power as collateral, to the payee.

No proof was given of any inquiry by the Company's agents as to whether the original owner was living, although the fact of his death would have been discovered if inquired about.

The Court held that the executrix could *not* compel the Company to supply the executrix with evidence of her title after such neglect of hers had caused the loss.

Judge Sharswood, delivering the opinion, says: "But there certainly was negligence on the part of "the appellee. As executrix, she placed the cer- "tificates in the hands of Creeley as her attorney, "with blank powers indorsed uncancelled. Thus, "by her act he was enabled to commit this fraud. "The equities of the respective parties are not "equal. When one of the two parties who are

"equally innocent of actual fraud must lose, it "is the suggestion of common sense, as well as "equity, that the one *whose misplaced confidence* "*in an agent* or attorney has been the cause of the "loss shall not throw it on the other. As Judge "King has well expressed this principle in The "Bank of Kentucky *v.* Schuylkill Bank (1 Parsons "Eq. Reports, 248): 'The true doctrine on this sub- "'ject is, that where one of two innocent persons is "'to suffer from the tortious act of a third, he who "'gave the aggressor the means of doing the wrong "'must alone bear the consequences of the act.'

"The appellee in this case selected the attorney. "She had entire confidence in him. She placed "these certificates with the blank powers in his "hands. He proved unworthy of the trust reposed "in him. He perpetrated a gross fraud by which "he converted this property to his own use. That "he was an attorney-at law in good standing does "not help her case. He added to the crime of "which he was guilty that of moral perjury by the "violation of his official oath. On what principle "of equity can she be allowed to throw off from "herself on to the appellants the loss which has re- "sulted from the dishonesty of her own agent? "The important element in the case was entirely "overlooked by the learned Master and the Court "below, and we think, applying it to the undis- "puted facts of the case, the appellee's bill as to "the appellants ought to have been dismissed."

Bill dismissed as to the Company, with costs.

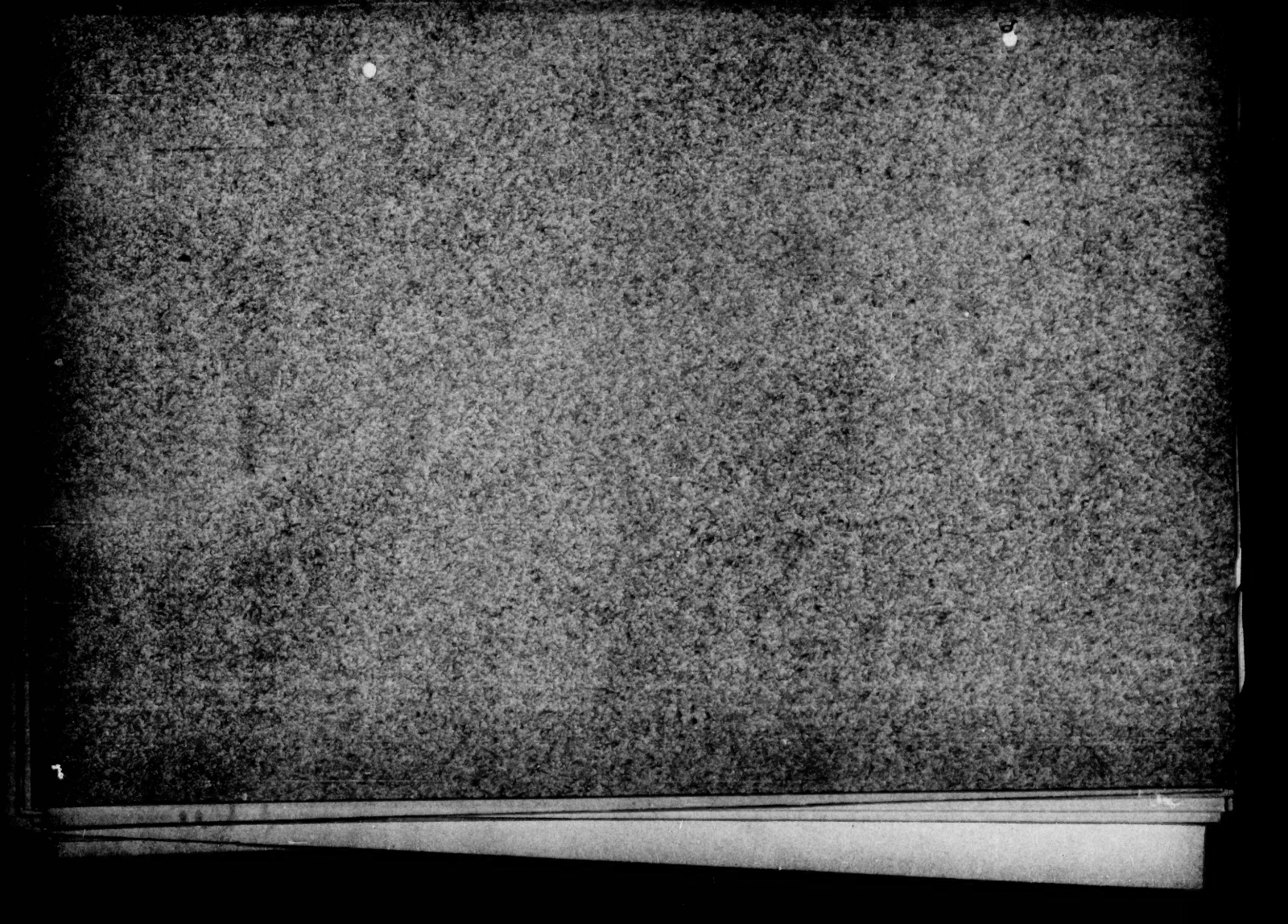
There are losses concerning which the law is compelled to declare that they must lie where they fall.

For other somewhat similar cases the maxim provides that "if one of two innocent persons must suffer by a deceit, it is more consonant to reason that 'he who puts trust and confidence in the deceiver shall be a loser rather than a stranger'" (*Carpenter* v. *Longan*, 16 *Wall*, 273); and where

that loss has *in the nature of things fallen upon him*, it is a great demand to make upon the wisdom of the law to require that it should pass beyond the scope of principles customarily applied to find some reason, outside of any negligence or promise by the other party, to lift the loss from him who already suffers it and place it on the shoulders of the at least equally innocent and uncompensated co-actor.

The case is one of hardship in any view; but it is respectfully urged that justice itself suffers a deeper than any private injury if the courts of law, in endeavoring to re-distribute losses, inflict a penalty on one who has done no wrong and omitted no reasonable precaution.

PERRY BELMONT,
GROSVENOR PORTER LOWREY,
J. HUBLEY ASHTON,
JOHN K. PORTER,
*Counsel for Appellants.*



Continental Daily Bulletin Print, 17 W. Eighth Street.

October Term 1878

# Supreme Court of the United States

In Equity.

*The Western Union Telegraph Co.,*
Appellant.

vs.

*Henry W. Davenport,*
Appellee.

No. 9

and

*Same Appellant*

vs.

*Katharine J. Davenport,*
Appellee.

No. 3

# Argument for Appellees.

John F. Follett, with
Charles Follett,
and Jacob D. Cox,
*Counsel for Appellees.*

# Supreme Court of the United States

*The Western Union Telegraph Co.,*
*Appellant,*

vs.

*Henry W. Davenport,*
*Appellee.*

AND

*Same Appellant*

vs.

*Katharine J. Davenport,*
*Appellee.*

## Argument for Appellees.

The above cases are exactly alike in all respects.

### Statement of Facts.

On the 11th day of August A. D. 1874, a bill in equity was filed by each of the appellees above named against the appellant, in the Superior Court of Cincinnati, Ohio, setting forth that each of the appellees was a child and a legatee under the provisions of the will of Charles Davenport, deceased. That Charles Davenport was, at the time

of his death, the owner of a large amount of the capital stock of the appellant. That after the settlement of the estate of said Charles Davenport, there was divided between the widow of said decedent, Euretta E. Davenport, and his children, the said appellees, eleven hundred and seventy shares of said capital stock, each share being of the par value of one hundred dollars, of which each of said appellees received one-third, or three hundred and ninety shares. That they were still the owners of said stock, and that said stock should stand in their names upon the books of the company and the dividends upon the same should be paid to them, or to their guardian. That the appellant, regardless of their rights and in violation of its duties and obligations in that behalf, without any legal right or authority whatever, had, as they were informed and believed, transferred said stock upon its books out of the name of said appellees and placed the same in the name of some person or persons to them unknown, and had since that time refused to recognize the appellees as the owners of said stock, or to pay to them or to their guardian the dividends thereon. That they were informed and believed that the said transfer of said stock upon the books of the said company was made in pursuance of a pretended power of attorney, authorizing such transfer, executed in the names of said appellees respectively, but they averred that they never executed or authorized anyone else to execute such powers of attorney, that the same were forged, and at the time of such pretended transfer they were minors and hence had no legal capacity either to execute or authorize the execution of such powers of attorney.

The prayer of the bill is that the appellant may be required to pay to the appellees the dividends upon said stock, and to replace said stock in their names upon its books and issue to them certificates for the same, or, in default thereof, to pay to appellees their value.

The caus s, after the filing of the bills and service of summons upon the appellant, were removed by the appellant to the Circuit Court of the United States. The answer simply presents an issue to the allegations of the petition.

The evidence in these cases, material to the issues, and which is undisputed, shows that the appellees are the only children of Charles Davenport, deceased; that Henry W. Davenport was born on the 25th day of April, A. D. 1854, and that Katharine J. Davenport was born on the 3rd day of November, A. D. 1856; that Charles Davenport died March 14th, A. D. 1865, and his widow, the mother of said appellees, was appointed guardian of their estates, and continued to be such guardian until they respectively arrived at the age of majority, which, under the laws of Ohio, Katharine reached on the 3rd day of November, A. D. 1874, and Henry on the 25th day of April, A. D. 1875, in each case after the bringing of these suits.

In the month of May, A. D. 1867, the executors of the will of Charles Davenport, for the purpose of settling and closing up their trust, having in their hands eleven hundred and seventy shares of the capital stock of the appellant for distribution, in equal proportions, between the widow and said appellees, obtained from the appellant two certificates of the capital stock of said appellant, each for

three hundred and ninety shares of one hundred dollars each share, one to Henry W. Davenport and the other to Katharine J. Davenport, and both bearing date May. 13th, 1867, and numbered respectively 15362 and 15363 Said certificates of stock by their terms, were "transfer-"able in person or by attorney on the books of the com-"pany only on the surrender and cancellation of this "certificate by an endorsement thereof hereon, and in "form and manner which may at the time be required "by the transfer regulations of the company."

After said certificates of stock had been turned over by the executors of the will of Charles Davenport to the guardian of said appellees, their mother, they were by her put into a tin box and locked up, and the box was put into the safe of the Fourth National Bank of Cincinnati for sate keeping. Robert W. Richey, a brother of Mrs. Davenport, was at that time an officer in said bank, and remained such for several years thereafter, and had access to said tin box. In February, 1871, said Richey took from said box the certificate of stock belonging to Henry W. Davenport, and signed the name of Henry W. Davenport to a transfer and power of attorney, on the back of said certificate, which reads as follows, (*Rec. p.* 40):

"For value received —— do hereby sell, assign and "transfer to Soutter & Co., three hundred and sixty, and "to Wm. Heath & Co., thirty (390) shares of the capi-"tal stock of the Western Union Telegraph Company of "one hundred dollars each, standing in name —— —— "on the books of the said company, and represented by "the within certificate, and do hereby irrevocably con-"stitute and appoint J. D. Thompson my attorney, to "execute a surrender and cancellation of the within cer-

"tificate, and also to do all things requisite to transfer "the said stock on the books of the said Company, in "such form and manner as may be necessary, or be re- "quired by the regulations of the said company, in that "behalf, with full power of substitution in the premises. "Dated February 23d, 1871."

"HENRY WADE DAVENPORT,"

"In Presence of:"

"R. W. RICHEY."

In June, 1871, said Richey took the certificate of stock belonging to Katharine J. Davenport, and signed her name to a like transfer and power of attorney on the back of the same.

The evidence shows conclusively that said transfers and powers of attorney were forgeries and wholly unauthorized. The testimony of the appellees and their guardian and mother, Mrs. Davenport, is explicit on this point. The appellant took the deposition of Robert W. Richey (see Rec. p. 49) and a part of his cross-examination is as follows: (Rec. p. 58.)

*Q.* "At the time of the sale of these two certifi- "cates, did you hold any power of attorney from these "children, or power or authority of any kind from them "or either of them, from their guardian or the proper "court, to transfer these certificates or to sign the names "of these children to these certificates?"

*A.* "I never did."

*Q.* "Did you, at the time of the transfer, sign or "endorse the name of each one of these children, on their "respective certificates?"

*A.* "I did."

Henry was less than seventeen years of age, and Katharine less than fifteen, at the time of the pretended sale and transfer of their respective stock certificates. Henry was at school in Switzerland, at the time of the pretended transfer of his stock, and Mrs. Davenport and Katharine went to Europe in the summer of 1871, leaving home for that purpose, about the middle of June, and none of them were advised of the pretended sale and transfer of said stock until in March or April, 1873.

The principal part of the testimony in these cases, viz: Most of the cross-examination, so called, of Mrs. Davenport and the deposition of Richey, relates to the state of accounts between Mrs. Davenport and Richey, and is wholly foreign to the issues in these cases, and is immaterial and irrelevant.

I shall not, therefore, consider this testimony until I come to the discussion of the question of its competency.

## Questions of Law Arising Upon the Foregoing Facts.

### I.

A corporation which has permitted a transfer of stock owned by a stock-holder, upon a forged power of attorney, and has canceled the original certificates, may be compelled to issue new certificates, and if it has no shares which it can so issue, to pay the value thereof in money.

Certificates of shares of stock in a corporation are not negotiable and the certificates of the appellees in

these cases as we have seen, were transferable only in person or by attorney on the books of the company, on the surrender and cancellation of the certificates. The company, as was its duty, kept the records and the only records of its stock. It is by law required, and it undertook to keep a full, complete and accurate account of all its stock-holders and the amount owned by each. It is sufficient for the appellees in these cases to show, that in May, 1867, they each appeared on the stock books of the appellant as the owner of three hundred and ninety shares of its stock, and that, as such owners, *they* have never transferred such stock, and that the appellant has transferred the same, or permitted it to be done, upon its books, to other parties, and now refuses to recognize the appellees as the owners of such stock, or to pay them the dividends thereon. Upon such showing, the appellees are entitled to be restored to all that they have lost. Certainly this is so, unless they have been guilty of some wrong or neglect directly contributing to the loss and injury they have sustained.

The appellees being minors at the time said transfers were made, or permitted by the appellant, could neither themselves make, nor delegate to any other the power to make, a valid assignment of said stock; and if it were attempted to charge them or either of them with wrong or negligence, it would avail nothing to the appellant. No attempt has been made to produce any *evidence* of wrong or negligence on the part of the appellees, but it has been argued that their mother was their guardian and her brother, Robert W. Richey, the one who

forged their names to the pretended transfer of the certificates, and by some species of legal logic, not easily comprehended, it has been sought to estop them from denying the validity of the transfer.

No case could be presented resting more singly, upon the effect to be given to a transfer upon a forged power of attorney, than these cases do.

In the case of *Davis vs. Bank of England*, 2 *Bingham*, 393, it was "Held, that a party might recover from "the Bank of England the dividends arising on his "stock in the funds, though at the time the dividends "were payable he knew the stock had some months pre- "viously been placed, under a forged power of attorney, "to the name of another person; omitted to inform the "bank of the circumstance, and did not demand pay- "ment of the dividends till after the escape of the "offender."

"Property in stock is not transferred from the "owner by being placed, under a forged power of attor- "ney, to the name of another person in the books of the "Bank of England."

This was a special action on the case, and is a leading case upon the main proposition involved in the cases at bar.

In the case of *Hildyard vs. South Sea Co. and Keate*, 2 *P. Wms.* 76, the points decided were as follows:

"One transfers stock by virtue of a forged letter of "attorney; the transfer to be void, and the right owner "not hurt; and the dividends received under the forged "letter of attorney, together with the stock, to be taken "back from the assignee, and restored to the right "owner."

# In the Supreme Court of the United States.

OCTOBER TERM, 1878.—No. 66.

H. J. ANTHONY, THOMAS R. PRICE, AND WILLIAM SMITH, COMMISSIONERS OF PICKENS COUNTY, PLAINTIFFS IN ERROR,

*vs.*

THE BANK OF COMMERCE OF RICHMOND, VIRGINIA, DEFENDANT IN ERROR.

## PLAINTIFFS' BRIEF IN REPLY.

### ADDITIONAL ASSIGNMENT OF ERRORS.

8th. That the "county of Pickens" not having been sued as a corporation, by its corporate name of "county of Pickens," is no party to this suit, and no judgment can be rendered against said county in this suit.

1. As to the judgment.

The ground we take, is that no judgment can be rendered against the county, because the county has never been sued.

By the act of the 26th of September, 1868, it is provided that—

"Each county shall be a body politic for the following purposes: To *sue* and be *sued*, purchase and hold, for the use of the county, personal estate and land lying within its own limits, and to make necessary contracts and do neces-

sary acts in relation to the property and concerns of the county." (Statutes of South Carolina for 1868, p. 134.)

The county as a corporation must be sued on all of its contracts. The statutes nowhere authorize suits against the county to be brought against the commissioners.

The plaintiff below had, we submit, as much right to sue John Doe and Richard Roe, and insist that it was a suit against the county, as to sue the commissioners.

"A corporation should (unless empowered to sue and be sued in the name of the clerk or trustee) sue and be sued by the name in which they are incorporated." (Brown on Actions at Law, vol. 14, sec. 154, p. 115—in the Law Library.)

Unless the statute law of South Carolina authorizes suits against the county to be brought against the commissioners, then in this case the county has never been sued.

We submit, then, that no judgment can be rendered against the county, because the county has never been sued, and the present judgment against the commissioners as individuals must be reversed, because there is nothing on the record showing personal liability on their part. The plaintiff below must fail, as against the county, because he has sued the wrong party; he must fail against the defendants, because he has brought the wrong claim.

See further: "Municipal corporations are created for the public advantage. The corporation is the artificial body created by the law, and not the officers, since these are the mere ministers of the corporation."

1 Dillon on Municipal Corporations, ch. 11, p. 93, sec. 9*b*. (Last edition.)

A corporation must, in all legal proceedings, be described by their corporate name.

1 Saunders on Pleading and Ev., title *Corporations*, p. 387.

"By the act of 1868, (Genl. Stats. S. C., chap. 18, sec. 34,) each county is declared to be a body politic and corporate. The county commissioners are those officers through whom the county performs its general functions of government," &c.

Glenn *v.* County Commissioners, 6 Richardson, S. C. R., 420.

W. W. BOYCE,
*Counsel for Plaintiffs in Error.*